

MINUTES
CITY COUNCIL
TUESDAY, AUGUST 23, 2011 - 5:30 P.M.
CALISTOGA COMMUNITY CENTER
CLOSED SESSION

CALL TO ORDER

Mayor Gingles called the Closed Session to order at 5:30 p.m. In attendance were the following: Councilmember Gary Kraus, Councilmember Karen Slusser, Vice Mayor Dunsford, and Mayor Jack Gingles. Councilmember Canning was absent.

Also present were City Manager Richard Spitler, and Public Works Director/City Engineer Dan Takasugi, and Assistant City Attorney Leah Castella.

ORAL COMMUNICATIONS

No public comment.

ADJOURN TO CLOSED SESSION ON THE FOLLOWING MATTERS:

1. Conference with Legal Counsel, Existing Litigation pursuant to Government Code Section 54956.9(a):
Grant Reynolds v. City of Calistoga, Napa County Superior Court Case No. 26-46826.

ADJOURN CLOSED SESSION

RECONVENE TO OPEN SESSION IN THE COMMUNITY CENTER

ACTION OUT OF CLOSED SESSION

Mayor Gingles announced that there was no reportable action out of tonight's Closed Session.

ADJOURNMENT

Mayor Gingles adjourned the Closed Session at 6:30 p.m. to the special meeting of the Calistoga City Council, on Tuesday, August 23, 2011 Calistoga Community Center, 1307 Washington Street, 6:30 p.m.

Respectfully submitted:

Prepared by: Susan Sneddon, City Clerk

Approved by: Jack Gingles, Mayor

MINUTES
CITY COUNCIL – SPECIAL MEETING
DRAFT KIMBALL DAM BYPASS PROJECT
PUBLIC HEARING
TUESDAY, AUGUST 23, 2011 – 6:30 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 Spitler, City Attorney Michelle Kenyon, Special Litigation Counsel Leah Castella, and City Clerk Susan Sneddon.

ORAL COMMUNICATION

None provided.

ADOPTION OF MEETING AGENDA

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

GENERAL GOVERNMENT

1. Consideration of a Resolution adopting the final Kimball Reservoir Bypass Plan

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

It was MOVED by Mayor Gingles and SECONDED by Vice Mayor Dunsford to adopt Resolution No. 2011-091 adopting the final Kimball Reservoir Bypass Plan. Motion was carried unanimously by the following vote:

AYES: Mayor Gingles, Vice Mayor Dunsford, Councilmembers Canning, Kraus, and Slusser

NOES: None

ABSTAIN/ABSENT: None

CITY COUNCIL ADJOURNMENT

Mayor Gingles adjourned the meeting at 6:509 PM to the regular meeting of the Calistoga City Council, on Tuesday, September 6, 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

PUBLIC HEARING

TRANSCRIPT OF PROCEEDINGS

TUESDAY, AUGUST 23, 2011

6:30 P.M.

CALISTOGA COMMUNITY CENTER
1307 WASHINGTON STREET
CALISTOGA, CALIFORNIA

Reported by:
KIM Y. ROTHERHAM
CSR No. 7397

Job No. 169262

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A P P E A R A N C E S

- Mayor Jack Gingles
- Vice Mayor Michael Dunsford
- 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
- Special Litigation Counsel Leah Castella

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Kurt Larrecou	10, 16
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Mr. Dunsford	9, 15, 16, 17, 19
Ms. Slusser	16, 18, 19
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Calistoga Community Center
City Council - Special Meeting
Tuesday, August 23, 2011 -- 6:30 p.m.

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MAYOR GINGLES: Excuse me; I'd like to call the City Council Special Meeting, City of Calistoga, to order.

Today is Tuesday the 23rd of August, and the time is 6:34.

Could you please all rise and we'll give a salute to the flag.

(Salute to the flag.)

MAYOR GINGLES: Next item on our agenda is oral communication. We have no consent items on here. We do have one agenda item. It's time to set aside to receive comments from the public regarding the matters on the agenda that we have this evening.

If you have not filled out a speaker card, please do so. I have one having to do with the Kimball Reservoir Bypass Plan, which is the one item under general government on the agenda. Please give us your name and your address and limit your comments to three minutes. We would appreciate it.

Next item on our -- well, on the oral

1 communication, I have one from Carl Wilcox, Fish and
2 Game. Carl, if you'd like to come up. We do have -- I'm
3 assuming this letter that was just handed to us is from
4 your office; is that correct?

5 CARL WILCOX: Yes, Mr. Mayor.

6 MAYOR GINGLES: Okay. I'd like to --

7 MS. KENYON: I'm sorry; do we want to have the
8 staff report first and then get public comment?

9 MAYOR GINGLES: Under oral communications?

10 MS. KENYON: I think he's speaking on the item
11 that's on the agenda.

12 MAYOR GINGLES: Well, we have the one item on
13 the agenda. Carl, could you hold -- stay right there if
14 you'd like and we'll go ahead and get a staff report.

15 We'll move on down, because we have the
16 adoption of the meeting agenda, and I will ask that we'll
17 do that later.

18 I'm going to move right on to the general
19 government consideration of a resolution adopting the
20 final -- the Kimball Reservoir Bypass Plan. Recommended
21 action is to adopt the resolution. I'm going to ask,
22 Dan, if you'll give us a report in reference to that.

23 MR. TAKASUGI: Sure. Thank you, Mayor and
24 Council Members. What we have before you this evening is
25 the interim bypass plan for Kimball Reservoir. You've

1 probably seen a version of this before. A draft of this
2 plan was distributed on May 27th, nearly three months
3 ago. Council held a public hearing, as you may recall,
4 on June 29th and took public comments.

5 The majority of this plan that you see before
6 you tonight was distributed on May 27th. But this
7 interim bypass plan incorporates some of those public
8 comments that were given on June 29th to improve the plan
9 to what we have now.

10 Part of the plan commits the City to construct,
11 amongst other things, a 12-inch bypass pipe to bypass
12 water up to 3.2 cubic feet per second and also improving
13 our inflow measurement capability.

14 It also commits the City to an instream flow
15 study to be completed by 2013. This is an ambitious
16 schedule for construction on some of these infrastructure
17 improvements if we're to complete them by March 1st.
18 That's before the flashboards in the dam are to be
19 installed.

20 So staff recommends that we really need to move
21 on this to make a decision now if we're to have any
22 chance of completing these infrastructure improvements by
23 March 1st.

24 At this time, staff recommends that you accept
25 public comment and adopt the resolution.

1 MAYOR GINGLES: Okay. Thank you very much.

2 Carl.

3 CARL WILCOX: I guess I'm on. Thank you.

4 MAYOR GINGLES: You're on.

5 CARL WILCOX: Mr. Mayor, Council Members.

6 Before you, you have a letter; it's the Department's
7 comments on the interim plan. And I just wanted to make
8 some comments relative to the efforts that we've been
9 going through with your City Manager, Mr. Spitler, and
10 his staff and the consultants to try to develop something
11 that, let's say, we could support in the interim. And I
12 think we've -- we're getting pretty close.

13 I don't think, and that's the gist of our
14 letter, that what's in the interim plan as it currently
15 exists is something we can support outright, but in that
16 letter we've identified a couple changes that are
17 elements of the -- some of the other alternatives that
18 would make it more acceptable to us as an interim plan.
19 And I think within the bounds of the adaptive management
20 process that there's the ability to do that. Talking
21 with the City's outside counsel, Paul Simmons,
22 particularly the -- the winter flow element relative to
23 spill and fill, I think one of the issues that -- with
24 the plan is that our interest is in seeing flow when
25 there's actually flow coming down the river and not

1 waiting for the reservoir to spill. So that's one of the
2 issues.

3 And I think with -- while it may not be
4 possible given that the time frames that it takes to
5 implement the -- the improved infrastructure to be able
6 to do that this year, there's some ability to bypass
7 water as it is. In the future, there would be greater
8 ability.

9 The other component is that we view this as an
10 interim plan. One of the components is to do further
11 investigations relative to instream flow studies. The
12 Department has staff that's available to work with the
13 City on that. In fact, we've talked with the City about
14 accessing and having some of our technical experts come
15 in and start to look at the stream. So we're certainly
16 ready and able to work with the City on developing that.

17 We have identified what we believe are the --
18 the necessary flow recommendations and look forward to
19 working with the City in the future to look at a
20 longer-term solution that gets both to the City's water
21 supply needs as well as to the fishery needs, which we
22 think can be addressed.

23 So that's -- those are the comments I wanted to
24 make. I think, you know, looking at the letter, it
25 may -- it's probably not -- I think it has a different

1 tone than I would have liked to, but we were cramming to
2 put a letter together this morning and yesterday. So I
3 just wanted to make it clear that we anticipate
4 continuing to work with the City on this in getting to
5 something that addresses the fish needs that are our
6 primary concerns.

7 MAYOR GINGLES: Thank you, Carl. I appreciate
8 that. I'd like to let the record show that we do have a
9 three-page letter submitted by Fish and Game over the
10 signature of Carl Wilcox, and it was handed to us just
11 prior to the start of the meeting. That can be entered
12 into the record.

13 While I'm doing that, I'd also like to enter
14 into the record the Friends of the Napa River letter that
15 is dated the 22nd. And also Living River Council, looks
16 like the date on this one is June 29. And then
17 August 23rd from the State Water Resources Control Board.
18 Those three letters, I'd like to make sure that they're
19 entered into the record also.

20 The second speaker we have, Kurt Larrecou.

21 MR. DUNSFORD: Mr. Mayor, I have a question of
22 procedure.

23 MAYOR GINGLES: Sure.

24 MR. DUNSFORD: I don't understand why we
25 haven't adopted the agenda and we're having speakers

1 speak to an agenda item, so I think out of --

2 MAYOR GINGLES: Because we went from oral
3 communication right on down to general government, and I
4 made that comment, that we would not adopt the agenda
5 until afterwards. If the Council feels uncomfortable, we
6 can go ahead and adopt it right now.

7 MS. KENYON: Why don't you go ahead and adopt
8 it.

9 MR. DUNSFORD: I'll move to adopt.

10 MR. KRAUS: Second the agenda.

11 MAYOR GINGLES: We have a motion and a second
12 on the question. Seeing none, all those in favor signify
13 by saying aye.

14 COUNCIL MEMBERS: Aye (in unison).

15 MAYOR GINGLES: Aye. Thank you very much. It
16 does pass the adoption of the agenda. Mr. Larrecou.

17 KURT LARRECOU: Thank you. Dan Takasugi's
18 report there said that we had this impending doom if we
19 didn't start today, and I have to laugh at that. His
20 report states that this -- it will take till July 1st,
21 2013, with some staffs and some calculations to figure
22 out the methodology of the instream flow.

23 One of the problems is if you go to C, flow
24 measurement commitment, we have an unknown there. We
25 have an unknown storage volume. We have not had a

1 sounding of that reservoir since the year 1996. That
2 water study is only good to two -- '99 year general plan.
3 So we're operating even out of our general plan to have
4 any in-filling in our town at this time.

5 The other item on the flow measurement sheet is
6 they talk about recorded bypass releases from existing
7 two-inch diameter pipes. I've seen these pipes. I don't
8 know if you have. They come as a siphon over the dam and
9 down and are thermal -- you know, they're hot water that
10 is entering the habitat that is supposed to be steelhead
11 stream. So they're not good.

12 And your expert at the same time, on page 12,
13 speaks to -- Mr. "Polick" or Podlech -- he speaks to the
14 water temperature will have a significant impact on the
15 ability for the stream to support large populations of
16 steelhead. He also talks about undersized culverts. We
17 have those right out here. And he also probably isn't
18 aware that the Zinfandel fish ladder now has a weir put
19 in it. It has been removed. It's like this one was
20 here. So we have a -- we do have a need to get water
21 into this river and not fool around.

22 And I've told you five times that in the year
23 2002, we were sued by the State Water Board. We signed
24 an agreement that we would let water bypass. And here we
25 are \$800,000 later with bad law advice and you guys are

1 sustaining the draining of the economy of this town, the
2 general fund of this town, and it has to stop.

3 I have filed a complaint today that there
4 should be no action on this. These reports were just
5 made available today. I don't understand why you can't
6 abstain from something until the general public has all
7 the methodology that our Public Works Department and this
8 so-called expert have put together for the future of this
9 town and the future of the natural resource that belongs
10 here.

11 Now, it's my opinion that we should move on,
12 and I believe we should actually release this attorney
13 and the other attorney and move towards some commitment
14 with Fish and Game, Regional Water, like we signed in
15 2002. Now, the people are paying for this.

16 MAYOR GINGLES: You're at three minutes,
17 Mr. Larrecou.

18 KURT LARRECOU: That's great. The people are
19 paying for this, and we need to stop today. This is out
20 of control. If each of you feels comfortable with this
21 bypass and having this emergency tonight, then you can
22 vote for it. But the right thing to do would be to
23 abstain tonight and let this move until we have some more
24 commitment. Thank you.

25 MAYOR GINGLES: Thank you very much. Next

1 item -- next speaker is Chris, I don't know the last
2 name. M-a-l-a-w, I believe. Am I -- is that right?

3 CHRIS MALAN: N.

4 MAYOR GINGLES: Oh, okay.

5 CHRIS MALAN: Yes. My name is Chris Malan.
6 I'm the Manager of Living Rivers Council. And, yes, we
7 did submit a letter back in June. And I do water
8 projects all over, up and down the State of California.
9 I concentrate a lot -- our nonprofit does a lot of work
10 in Napa on the Napa River. We've focused on it for the
11 last 15 years before anybody believed there were salmon
12 in the river. And I have never had this much short
13 amount of time to look at a project. I'm overwhelmed. I
14 wasn't even going to come up and speak because how can
15 you speak legitimately to such an important project if
16 you have ten minutes to look at all that material?

17 But I -- I will say, in the short three minutes
18 that I get to be at the microphone, that I urge you to
19 let the public be part of this important process because
20 we have valuable things to say. It isn't always just
21 about government talking to government about our public
22 resources -- fishing, swimming, recreating in the Napa
23 River. It belongs to the people. And we have a right to
24 protect our public trust interests, and we're not getting
25 it tonight.

1 And I urge you to give us some time to review
2 the material so we can come to the microphone and be
3 knowledgeable about the plan that you all are proposing.
4 It's not right to come up with this interim bypass plan
5 without public input. In fact, it's really not legal to
6 do that. I mean, we -- we have the right to look at this
7 and have time to look at it.

8 So nobody wants to slow down the process of
9 getting water back into the river, but after all these
10 years of Calistoga dewatering the river, a few more
11 weeks, a week or two, isn't going to make that much
12 difference because you've already killed a huge number of
13 endangered fish already. So we want to get it right this
14 time. We want to make sure that the bypass flows are
15 sufficient for a healthy fisheries, not a fisheries
16 hanging on, at the verge of extinction. We need water
17 from the headwaters all the way down the river.

18 People are dewatering the river all over the
19 place. In the -- in the tributaries, in the main stem,
20 it is the order of the day to put your pumps in the river
21 and start pumping. It doesn't matter; a lot of people do
22 not care enough about the fish, and there are a few
23 people out there who do. And we want our river back. I
24 want to be able to take my grandkids swimming. I want to
25 be able to take them fishing. And if you steal all the

1 water, we can't do that.

2 So please give us time to be substantive
3 partners in working with the City and Fish and Game and
4 NOAA Fisheries, to be part of the picture here, because
5 it belongs to us. It doesn't belong to government
6 entities who come and go and play around with numbers and
7 think they can get what they need just for development
8 and forget about the fish. They need it year-round.
9 Year-round they need flows.

10 MAYOR GINGLES: You're right at three minutes.

11 CHRIS MALAN: Thank you.

12 MAYOR GINGLES: Thank you very much. We
13 appreciate your comments.

14 I have no other speaker cards. I will close
15 the oral communication portion of this and, as part of
16 this, move it on down. We were under the general
17 government to begin with. Under the consent -- and I
18 shouldn't say consent, but the oral communications, I'm
19 going to ask the Council, any questions that you have of
20 staff in reference to this item tonight?

21 MR. DUNSFORD: Well, a question I had of Dan
22 was, wasn't the -- the first draft plan, didn't that come
23 out at the end of May?

24 MR. TAKASUGI: That did come out on May 27th.

25 MR. DUNSFORD: And then we had a public hearing

1 after that?

2 MR. TAKASUGI: June 29th.

3 MR. DUNSFORD: And then tonight's public
4 hearing?

5 MR. TAKASUGI: Correct.

6 MR. DUNSFORD: And then so the refinement plan,
7 this -- this interim plan was made available Friday?

8 MR. TAKASUGI: Yes, that is correct.

9 MR. DUNSFORD: Okay. Thank you.

10 MS. SLUSSER: But the other information has
11 been out there?

12 MR. TAKASUGI: The majority of the plan.

13 MR. DUNSFORD: Since -- since May? Okay.

14 MR. LARRECOU: That's not correct. It didn't
15 come out --

16 MAYOR GINGLES: Would you please -- would you
17 please keep your comments to yourself, please. We're not
18 at the --

19 MR. LARRECOU: We don't need Mr. Takasugi --

20 A VOICE: Tell the truth.

21 MR. LARRECOU: -- speaking a nontruth.

22 MAYOR GINGLES: Council Members, comments that
23 you -- any other questions that we have of staff?

24 MR. KRAUS: Yeah. I have a question for Dan
25 and maybe he can answer, maybe it has to go to Warren.

1 This plan releases more water than we've released before
2 for the benefit of the ecology of the stream, streambed
3 there. We have 5,000 people in this -- 5,200 people in
4 this community that rely on some of that water to live.
5 Do we have the capability to operate with releasing this
6 amount of water?

7 MR. TAKASUGI: Under this interim bypass plan,
8 we feel that it effectively balances the needs of the
9 City and the needs of the -- the fish. There are times
10 during dry years where it does become difficult. But
11 under this bypass plan, we feel that we can accommodate
12 the needs of both.

13 MR. DUNSFORD: And the -- the time lines that
14 you've established, you feel that we can meet those time
15 lines?

16 MR. TAKASUGI: Again, very difficult. We're
17 dealing with a rainy season that's coming ahead. We're
18 dealing with some very difficult construction in a remote
19 location. We're dealing with, partly times, construction
20 where we haven't really done adequate design effort.
21 It's going to be designed often in the field. So, yes,
22 it's going to be difficult, but we'll do our best,
23 absolute best to get the infrastructure improvements
24 completed by March 1st.

25 MR. KRAUS: This is an interim plan, this isn't

1 the final -- necessarily the final solution. It may be,
2 but there may be additional --

3 MR. TAKASUGI: Until the instream flow study is
4 completed.

5 MR. KRAUS: Okay.

6 MR. TAKASUGI: There will be more permanent
7 solutions after that.

8 MR. KRAUS: And this is the fastest way that we
9 can release water in order to save the -- some fish
10 anyway?

11 MR. TAKASUGI: That's correct.

12 MR. KRAUS: Given -- given the condition of the
13 streambed all the way on down, I understand perhaps
14 the -- the lady who spoke earlier here, I understand
15 there's something like 200 illegal impoundments of water
16 downstream from us. So --

17 MS. SLUSSER: I mean, that's not our fault and
18 that's something that I feel has not been addressed by
19 anybody in this situation. You know, we have a limited
20 water source, and, you know, we could empty the whole dam
21 and people would still be taking water out. We need to
22 get rid of those illegal situations, and nobody is
23 walking the river to find out. So I think that would be
24 a good idea.

25 Does -- does our water from the Delta -- does

1 that go up -- is that pumped into --

2 MR. TAKASUGI: No, it is not pumped into
3 Kimball, and it really cannot be.

4 MS. SLUSSER: So those are two separate
5 operations totally?

6 MR. TAKASUGI: Yes. Once it gets into certain
7 parts of town, it is mixed, but it's really separate
8 sources of supply.

9 MS. SLUSSER: And what happens if we get low on
10 Kimball, how -- I mean, is there a good supply coming up
11 from the Delta to make up the difference?

12 MR. TAKASUGI: One of the problems we have is
13 that our pipeline coming from -- all the way from Napa
14 and then we kind of have our own pipeline that comes from
15 Conn Creek up to the City, it's very small and narrow,
16 and we really cannot pump very much water through that
17 line at any one time. So that is a real constraint for
18 us, that even though we may have entitlements to more
19 water through the State Water Project, we just can't get
20 it here. And that's why at certain times of the year we
21 definitely rely on both sources of supply for the
22 citizens.

23 MS. SLUSSER: Thank you.

24 MR. DUNSFORD: There was a comment made about
25 the temperature of the water, and I didn't quite

1 understand that. I think what was stated was that the
2 water was hot water, but is that -- was that just an --
3 was he stating that the water was coming from the top of
4 the reservoir, therefore it's warmer than what would be
5 on the bottom?

6 MR. TAKASUGI: Really the water that's coming
7 out of our existing bypass lines is coming out of the
8 same place where we will be taking the new bypass. It is
9 not a siphon system. We have a 12-inch raw water line
10 that comes basically out of a midpoint in the reservoir
11 and is piped down to the lower part of the dam under the
12 spillway and heads to our water treatment plant. By and
13 large, it's about as cool of water as we could possibly
14 hope for that's being discharged or bypassed into the
15 creek.

16 MR. DUNSFORD: Okay.

17 MAYOR GINGLES: Any other questions of staff?
18 Seeing none, then I'm going to -- I'll move that we adopt
19 the resolution that's before us this evening in reference
20 to the Kimball Reservoir Bypass Plan.

21 MR. KRAUS: Second.

22 MAYOR GINGLES: And on a further statement,
23 make sure that we do have the copies of the four letters,
24 the three from the groups down in the valley and also
25 Fish and Game.

1 We have a motion and a second on the question?

2 Seeing none, all those in favor signify by saying aye.

3 COUNCIL MEMBERS: Aye (in unison).

4 MAYOR GINGLES: Aye. Against? Passes

5 unanimously. Thank you very much.

6 Okay. Next item on our agenda is the

7 adjournment. We will be adjourning this meeting to

8 September 6th, 7:00 p.m., here in this room here.

9 I want to thank everybody for coming out, and
10 hopefully we can get this thing resolved.

11 (Proceedings concluded at 6:59 p.m.)

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