

RESOLUTION NO. 2009--

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF INYO, STATE OF CALIFORNIA, CERTIFYING AND
ADOPTING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR AND APPROVING
CONDITIONAL USE PERMIT #2007-03/COSO OPERATING COMPANY, LLC**

WHEREAS, the Inyo County Board of Supervisors, through Section 15.12.040 of Inyo County Code, has designated the Inyo County Planning Commission as the Environmental Review Board pursuant to Section 15022 of the California Environmental Quality Act (CEQA) Guidelines; and

WHEREAS, pursuant to Section 15025 of the State CEQA Guidelines as implemented by Section 15.12.040 of the Inyo County Code (CEQA Procedures), the Planning Commission is responsible for the environmental review of all County projects; and

WHEREAS, on June 13, 2007, Coso Operating Company, LLC submitted an Application for Conditional Use Permit #2007-03/Coso Operating Company, LLC; and

WHEREAS, the Inyo County General Plan designates the subject property as Rural Protection (RP), 1 dwelling unit per 40 acres, 40-acre minimum parcel size (5.36 acres – private lands); State and Federal Lands (SFL) (32.24 acres – Bureau of Land Management); and, State and Federal Lands (SFL) (16.18 acres – China Lake Naval Air Weapons Station) in the Land Use Element of the 2001 Inyo County General Plan; and

WHEREAS, the Zoning for the subject property is Open Space, 40-acre minimum parcel size (OS-40), and public facilities, including power, water, septic, and fire protection, are adequate to meet the needs of the proposed project; and

WHEREAS, the general purpose of these land use designations and the zone district is the maintenance of open spaces and natural resources; and

WHEREAS, in compliance with the requirements of the California Environmental Quality Act (CEQA), a Draft Environmental Impact Report (DEIR) was prepared for the project and circulated to the State Clearinghouse, all affected agencies, and all interested parties for public review and comment pursuant to the provisions of CEQA; and

WHEREAS, the public comment period closed on September 6, 2008 and forty-six comments were received; and

WHEREAS, following the close of the comment period for the DEIR, a Final Environmental Impact Report (FEIR) was produced, consisting of the Draft Environmental Impact Report, a list of persons and organizations who made comments, comments received, and responses to comments; and

WHEREAS, pursuant to Chapter 18.77 of the Inyo County Code, the Inyo County Water Commission considered this project at a public hearing on January 12, 2009 and January 26, 2009 and recommended that the project not be approved but also recommended changes to the MMP; and

WHEREAS, the Inyo County Planning Commission considered the FEIR, all relevant project factors including effects on wildlife, water levels in wells, riparian and groundwater dependent vegetation, rare or endangered plant or animal species, recharge to the groundwater basin, the groundwater storage capacity of the basin, the potential for overdraft and subsidence, water quality, and considered the capability of the proposed Mitigation, Monitoring and Reporting program to detect and avoid significant adverse impacts, and considered the cumulative effects of the proposed water transfer within the affected groundwater basin with the effects of past water transfers and water exports, as well as approved and anticipated future water transfers and water exports from the affected groundwater basin; and

WHEREAS, the Planning Commission considered the recommendations of the Inyo County Water Commission as well as hydrology modeling done for the project, and concluded that the project would not result in significant impacts; and

WHEREAS, the Inyo County Planning Commission held a noticed public hearing on March 11, 2009, and voted to adopt and certify the FEIR and to approve Conditional Use Permit #2007-03/Coso Operating Company, LLC with changes to the MMP for the project; and

WHEREAS, on March 23, 2009, the approval of the Planning Commission was appealed to the Inyo County Board of Supervisors by Little Lake Ranch, Inc. (“LLR”); and

WHEREAS, the Inyo County Board of Supervisors held a noticed public hearing on May 6, 2009, to consider the FEIR for and Conditional Use Permit #2007-03/Coso Operating Company, LLC; and

WHEREAS, at the May 6, 2009 hearing the Board of Supervisors considered the reports of staff to the Board, the Water, and the Planning Commissions, written comments to the Water and the Planning Commissions, the Environmental Impact Report, and all oral and written comments regarding the project; and

WHEREAS, there will be minimum permanent disturbance (approximately 5 acres) from the project, with the balance of the 54 acres of temporarily disturbed acreage reclaimed and re-seeded in native vegetation; and

WHEREAS, the applicant will develop all needed service facilities (substation, water tanks, etc.) on-site, and there is adequate capacity available from all other service providers (roads, fire protection, solid waste disposal, electricity, parks, schools, etc.) for the project; and

WHEREAS, with mitigation, there are no significant groundwater, hydrology, biological, storm water drainage, air quality, traffic, hazardous materials, noise, light or glare, geological/soils, or other impacts from the project; and

WHEREAS, the proposed water extraction and delivery system project is located in an area suitable for this type of development and will be compatible with the surrounding area.

NOW, THEREFORE, BE IT HEREBY RESOLVED that, based on all of the written and oral comment and input received at the May 6, 2009 hearing, including the Planning Department Staff Report, the Water Department staff report to the Water Commission, written comments to the Water and Planning Commissions, the Environmental Impact Report for the project, and the recommendations of the Inyo County Water Commission, the County of Inyo Board of Supervisors makes the following general findings:

1. Geothermal power generation provides electrical power without releasing carbon dioxide into the atmosphere. Such clean power is a national resource and is necessary to reduce atmospheric pollution that results in climate change, an imminent threat to public health and safety. The development of geothermal power additionally contributes to the national security in that it reduces the nation's dependence on foreign sources of fuel. Both Inyo County and the State of California have experienced shortages of electrical power in the recent past and providing new electrical power contributes to the economy of both Inyo County and the State.
2. The Coso Geothermal field contributes jobs and economic activity to the Counties of Inyo and Kern, and is an important source of tax revenue for the County of Inyo. This tax revenue helps support the Southern Inyo Hospital and schools in the southern part of Inyo County as well as health, welfare and police services for the entire County. The reduction or loss of such economic activity and tax revenue would have a severe negative effect on the economy of the County, the education of its children, and the public health and safety of its citizens.
3. Although the Coso Geothermal field is an important and vital contributor to the well-being of the citizens of Inyo County, it is important that operation of the proposed water export project not have significant negative environmental effects on the County. The water will be exported from the northern portion of Rose Valley. Nine miles south is a reservoir that has existed for many decades, called Little Lake. Little Lake is privately held and managed as a hunting preserve. Little Lake provides recreational opportunities to its owners and their guests.
4. Additionally, the Little Lake reservoir is a fine example of the contribution of sportsmen to the environmental well-being of the County and its citizens. The Little Lake Hunting Club has worked diligently to improve the quality of the habitat at Little Lake, which serves as excellent lake and wetland habitat for a variety of species and particularly for waterfowl. The Hunting Club has expended countless hours and many dollars improving the habitat on its property to the benefit of itself as well as all of the citizens of Inyo County.
5. This Board finds that the Hay Ranch project will be protective of the Little Lake habitat and with mitigation will result in no significant impact to that habitat. Additionally, the studies required by the mitigation measures will provide valuable scientific insight into the Rose Valley aquifer, beyond that achievable by CEQA studies. As a result of the groundwater withdrawal and studies, and over a period of years, Inyo County will be able to more accurately characterize the Rose Valley aquifer, to include determining the connectedness between the northern portion of the aquifer near Hay Ranch with the southern portion near the Little Lake reservoir, and will gain a better understanding of the amount of water available for use in Rose Valley. This type of information can only be gained by extensively pumping the aquifer while studying the effects of that pumping.

6. The Inyo County Water Department has extensive experience evaluating the effects of groundwater pumping and a long track record of protecting the County's natural resources from the negative effects of groundwater withdrawal and export. Inyo County has demonstrated its commitment to protecting the natural resources of the County while furthering the interests of its citizens and is the single entity capable of balancing the varying interests of the citizens of Inyo County. It is important to this Board that the Water Department retain discretion over the life of this permit to enforce mitigation measures and modify them, if necessary, to protect the County's citizens and environment, subject to oversight by the Commission and ultimately the Inyo County Board of Supervisors. Doing so is an obligation inherent in the County's sovereign role as protector of the health, welfare and safety of its citizens.

BE IT FURTHER RESOLVED that, based on all of the written and oral comment and input received at the May 6, 2009 hearing, including the Planning Department Staff Report, the Environmental Impact Report for the project, and the recommendations of the Inyo County Water Commission, the County of Inyo Board of Supervisors finds that the requirements of the California Environmental Quality Act (CEQA) have been met.

BE IT FURTHER RESOLVED that this Board makes additional findings as contained in Attachment A hereto, relating to the EIR as well as the findings required by California Code of Regulations, Title 14, Division 6, Chapter 3, Section 15091 regarding potentially significant impacts identified in the EIR.

BE IT FURTHER RESOLVED that the County of Inyo Board of Supervisors has determined that the environmental baseline condition for power production resulting from approval of this water export project is the amount of power production that was allowed by permit at the time of filing of the notice of preparation for this EIR. This Board therefore recognizes and corrects the ambiguity introduced into the EIR by master response to comment A6 of the final EIR and adopts the following response to replace the first two sentences of the second paragraph of Master Response A6:

The potential increase in power production at the power plants was not addressed because the project as proposed would not increase power production at the plants beyond the existing *permit* conditions (established at the time of issuance of the Notice of Preparation [NOP]). The relevant baseline in this discussion is the amount of energy that is *permitted to be* produced by the plants. Any other responses to comments in this EIR that refer to baseline power production refer to production as allowed by permit at the time of the issuance of the NOP.

BE IT FURTHER RESOLVED that the County of Inyo Board of Supervisors certifies that the subject EIR was prepared in compliance with CEQA, was presented to, reviewed, and considered by this Board, and reflects the independent judgment and analysis of this Board.

BE IT FURTHER RESOLVED that this Board specifies that the Inyo County Planning Department in Independence, California, is the custodian of the documents and other materials which constitute the record of the proceedings upon which this decision is based.

BE IT FURTHER RESOLVED that this Board adopts the Mitigation, Monitoring and Reporting Program, including the Hydrologic Mitigation and Monitoring Program, developed for this

project and included in the Final EIR as Appendix 1 and made a condition of project approval by this Resolution.

BE IT FURTHER RESOLVED that this Board makes the following findings for the proposed project:

- A. The water extraction and delivery system project is consistent with the Inyo County General Plan and the Inyo County Zoning Ordinance.
- B. The water extraction and delivery system project complies with the requirements for a Conditional Use Permit.
- C. The site is physically suited for the proposed use.
- D. The design or proposed construction requirements for the project are not likely to cause substantial environmental damage, or substantially and avoidably injure fish, wildlife, or their habitat, or cause serious public health problems.
- E. There is sufficient water supply available for the water extraction and delivery system project as approved by this Resolution.
- F. The proposed Conditional Use Permit is consistent with the land use designations of Rural Protection (RP), 1 dwelling unit per 40 acres, 40-acre minimum parcel size (5.36 acres – private lands); State and Federal Lands (SFL) (32.24 acres – Bureau of Land Management); and, State and Federal Lands (SFL) (16.18 acres – China Lake Naval Air Weapons Station) in the Land Use Element of the 2001 Inyo County General Plan, and will not have an adverse impact on any present or planned development on the subject property or surrounding properties or facilities.
- G. Based on the CEQA analysis, relevant recommendations submitted by the Water Commission, including all proposed conditions and mitigation measures, and on the analysis of the Planning Department staff and the Planning Commission, the proposed water transfer project will not unreasonably affect the environment or overall economy of the County.
- H. Pursuant to Inyo County Code § 18.81.100, the activity to be conducted pursuant to the Conditional Use Permit is desirable, will be properly related to other uses and to transportation and service facilities in the vicinity, and will not, under the circumstances, adversely affect the health or safety of persons living or working in the vicinity, nor will it be materially detrimental to the public welfare.

BE IT FURTHER RESOLVED that the County of Inyo Board of Supervisors makes the following findings regarding the project's compliance with the County of Inyo General Plan:

The MMP developed for the project provides a way to meet the goals for water resources outlined in the County's General Plan, which include:

- Goal WR-1: Provide an adequate and high quality water supply to all users within the County.

- Goal WR-2: Protect and preserve water resources for the maintenance, enhancement, and restoration of environmental resources.
- Goal WR-3: Protect and restore environmental resources from the effects of export and withdrawal of water resources.

BE IT FURTHER RESOLVED that, upon consideration of the written information and oral testimony received at said public hearings, including all materials presented to the County of Inyo Planning Commission, and based upon the entirety of the record, the Inyo County Board of Supervisors approves Conditional Use Permit #2007-03/Coso Operating Company, LLC subject to the following conditions of approval:

- 1.) Hold Harmless: The applicant shall defend, indemnify, and hold harmless the County of Inyo (County), and its agents, officers and employees from any claim, action, or proceeding against the County, its agents, officers or employees to attack, set aside, void or annul the County's approval of the Conditional Use Permit. The County reserves the right to prepare its own defense.
- 2.) Compliance with County Code: The applicant shall comply with all applicable provisions of the Inyo County Code.
- 3.) Compliance with Mitigation Measures. The applicant shall comply with all mitigation measures included in the MMP developed for the project (Appendix 1, FEIR) and adopted by this Commission.
- 4.) Establishment of Use: This Conditional Use Permit shall become void unless the use is established, or construction necessary to its establishment, is diligently pursued within two years from the date of this Board's approval. Any application for extension must be received in writing by the Inyo County Planning Department prior to the expiration date of the approved Conditional Use Permit.
- 5.) Term of Conditional Use Permit: This Conditional Use Permit expires thirty (30) years from the date of final approval.
- 6.) Modification or Revocation of Conditional Use Permit: If at any time the Planning Commission finds that the project, if continued, would cause an unreasonable effect on the overall economy or the environment of Inyo County, the Planning Commission shall modify the provisions of this CUP to the extent that it finds to be necessary to avoid the occurrence of such effect. If the Planning Commission finds that this project has unreasonably affected the overall economy or the environment of the County, the Commission shall order the implementation of such additional mitigation measures as it finds necessary to reduce the level of the effect to less than significant and may modify this CUP to the extent it finds necessary to avoid the occurrence of such unreasonable effects in the future. The Planning Commission may revoke this CUP if it finds that the project cannot be continued without causing an unreasonable effect on the overall economy or the environment of Inyo County, or if the Commission finds that there has been a failure to reasonably comply with the terms of the permit.
- 7.) Actions to Enforce Conditional Use Permit: If the County brings an action against the Applicant to enforce a term, condition, restriction, limitation, or provision of the Conditional Use Permit and is the prevailing party, the County will be entitled to recover from the Applicant the cost of bringing such action, and enforcing the judgment or order of the court, including its reasonable attorney fees.

BE IT FURTHER RESOLVED that, pursuant to recommendation of the Water and Planning Commissions and after considering all of the written evidence and the oral testimony adduced at the public hearing, this Board determined to make the following modifications to the hydrologic monitoring and mitigation plan. These modifications provide additional protection to the environment as compared to the existing Mitigation, Monitoring and Reporting Program (MMP) and ensure that no significant impact to the environment will result from the project with mitigation. The following modifications are hereby incorporated in the MMP and are adopted by this Board:

- Mitigation Measure Hydrology-2 is modified by inserting the following before the second-to-last sentence in that mitigation measure: “Any well owner experiencing an impact to his or her well may contact the Inyo County Water Department which will evaluate whether the impact results from the project. The Inyo County Water Department will direct appropriate action of the applicant.”
- Mitigation Measure Hydrology-3 is modified by adding the following to the first paragraph in that mitigation measure: “Applicant shall install a flow meter or meters at Davis Spring on Portuguese Bench and shall monitor flow from that spring. The Davis Spring is entitled to all of the mitigation measures included in Hydrology-2.”
- Mitigation Measure Hydrology-4 is modified by replacing the first sentence with the following: “Applicant shall be allowed to pump 3,000 acre feet a year for the first year after initiation of pumping or until the groundwater model is recalibrated, whichever is later. Thereafter, the applicant shall be allowed to pump at the full proposed pumping rate. All such pumping is allowed until a time when and if the predicted groundwater drawdown trigger levels are exceeded at two or more of the designated Rose Valley monitoring points by at least 0.25 feet, or if a maximum acceptable drawdown level is exceeded at any monitoring point.”

BE IT FURTHER RESOLVED, that the Board of Supervisors of the County of Inyo, State of California, does hereby approve Conditional Use Permit #2007-03/Coso.

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**PASSED AND ADOPTED THIS 6th DAY OF MAY, 2009 BY THE FOLLOWING
VOTE:**

AYES:

NOES:

ABSTAIN:

ABSENT:

**Beverly Brown, Chairperson
Inyo County Board of Supervisors**

ATTEST:

**KEVIN CARUNCHIO
Clerk of the Board**

**By: _____
Pat Gunsolley, Assistant**