



**MONTEREY COUNTY WATER RESOURCES AGENCY
BOARD OF DIRECTORS**

BOARD MEMBERS:

Richard Ortiz, Chair
Claude Hoover, Vice Chair
Silvio Bernardi
Ken Ekelund
Mark Gonzalez
David Hart
John Huerta
Mike Scattini
Deidre Sullivan

STAFF:

David Chardavoine, General Manager
Robert Johnson, Assistant General Manager
Brent Buche, Assistant General Manager
Cathy Paladini, Finance Manager
Wini Chambliss, Clerk to the Board
Jesse Avila, Deputy County Counsel

June 2, 2014

MINUTES

1. CALL TO ORDER/ESTABLISH QUORUM

The Special Meeting was called to order @ 12:02 PM.

Directors Present: Directors Richard Ortiz, Claude Hoover (@ 12:04 PM), Silvio Bernardi, Ken Ekelund (returned @ 1:16 PM), David Hart, John Huerta (@ 1:10 PM), Mike Scattini and Deidre Sullivan

Directors Absent: Director Mark Gonzalez

A quorum was established.

2. PUBLIC COMMENT ON CLOSED SESSION ITEMS - None

1. CLOSED SESSION – Directors adjourned to Closed Session @ 12:03 PM

2. RECONVENE MEETING/-RE-ESTABLISH QUORUM

Chair Richard Ortiz reconvened the meeting after lunch and Closed Session @ 1:13 PM.

A quorum was again established.

Deputy County Counsel Jesse Avila indicated there were no reportable actions taken in Closed Session.

3. PLEDGE OF ALLEGIANCE (led by Director John Huerta).

4. PUBLIC COMMENTS

Mark Silberstein, Executive Director of the Elkhorn Slough Foundation, discussed correspondence received from the Agency indicating the Agency's discontinuance of contribution to the ESNER sample testing effort as of July 1, 2014 due to the Agency's budget challenges. Mr. Silberstein made a plea to the Board to postpone its decision until a meeting could be arranged. He submitted a letter and documentation demonstrating how the data has been used (attached).

Nancy Isakson, Salinas Valley Water Coalition, stated the day's agenda packet contained no information regarding draft changes in legislation to the Agency Act as related to the Interlake Tunnel Project. She indicated the draft she reviewed appeared inconsistent with the current legislative act. Ms. Isakson commented on the importance of properly vetting the Agency's business.

Norm Groot, Monterey County Farm Bureau, echoed Ms. Isakson's comments, emphasizing the need to publicize all pertinent information and ensure that it is correct before making important decisions.

5. PRESENTATIONS

A. Castroville Seawater Intrusion Project Insurance

Mr. Mauck presented information related to the Agency's overall 2014-15 Insurance Placement (attached). He reviewed expiring and bound renewal General Liability, Pollution Liability and Public Officials Liability premiums. Mr. Mauck noted last year's total premium was \$184,933; the current year's premium is \$207,867, for an overall increase of 14.4%. Mr. Mauck noted significant increases in Primary General Liability (34.10%) and Public Official Liability (34.63%).

Board Questions/Comments (*Staff responses are emboldened and italicized*):

1. Is the 17% commission rate standard? ***Yes.***
2. Will the Public Officials Liability decrease in time? ***Yes, if there are no further claims such as the one associated with the Agency's former Director.***

B. Nitrate Harvester

General Manager David Chardavoine reported that he would be presenting for Dale Huss, who was called out of town. Mr. Chardavoine reported Agency Staff have visited the pilot project, and it appears to work better than originally anticipated and has the potential of producing water that could be purified later into drinking water.

Mr. Chardavoine read promising results of initial testing efforts; but, noted further testing is required. He stated there is no residency time and no real pressure. A by-product of the process is ammonium nitrate, which can be utilized as fertilizer.

Board Questions/Comments (*Staff responses are emboldened and italicized*):

1. Will there be follow-up reports on scalability, etc.? *Before discussing scalability, we must determine results on Blanco Drain and/or the Reclamation Ditch. There may be water rights considerations to resolve prior to trying it out on those waters. Another consideration is cost.*
2. Can this process be utilized by others? Is there a license? *There is a patent pending; so, we do not know the commercial terms for using this device.*

6. CONSENT CALENDAR

- A. Approve the Minutes of the following meetings: Regular Board of Directors Meeting held on April 28, 2014 and Special Board of Directors Meeting re: Water Rights Permit #11043 Activities Workshop held on May 14, 2014 with necessary corrections.
- B. Approve purchase orders/contracts in excess of \$500 and credit card purchases over \$500 in March/April 2014.
- C. Appoint Robert Johnson and Howard Franklin as Monterey County Water Resources Agency representative and alternate respectively to the Paso Robles Ground Water Basin Advisory Committee.

Public Comments:

Nancy Isakson, Salinas Valley Water Coalition, requested a revision to the April 28, 2014 Minutes as she recalled a discussion of the Board's intent to repay Zone 9 for costs associated with the application fee for Water Rights Permit #11043 once a revenue stream had been identified. Staff responded there was discussion and the Minutes can be revised to further reflect the discussion; but, no action was taken in that regard. However, the matter will be considered on the June 30, 2014 agenda.

Director Mike Scattini left the dais at 1:41 pm and returned at 1:43 pm.

ACTION:

Motion and Second by Directors Ken Ekelund and John Huerta to approve the Consent Calendar with necessary corrections.

Motion carried unanimously by those present.

9. ACTION ITEMS

- A. Consider approving and authorizing the General Manager to execute a Memorandum of Understanding (MOU) with the County of Monterey for the supervision and management of the 2010 General Plan Salinas Valley Groundwater Basin Zone 2C Study.

General Manager David Chardavoyne presented this item, explaining that per Policy PS-3.1 of the Monterey County General Plan, Monterey County is required to undertake a five-year study of the Salinas Valley Groundwater Basin. Monterey County will cause an engineering firm to conduct the study; but the County wanted a project manager to supervise the study and identified the Agency as the entity that should do this. This MOU will ensure the Agency is reimbursed for the services provided to Monterey County for its Zone 2C Study. The Water

Resources Agency Board of Supervisors has delegated full approval authority to the Board of Directors in this regard.

Board Questions/Comments (*Staff responses are emboldened and italicized*):

1. Is this study for more than one year? ***It is a five-year study at a cost of approximately \$75,000 per year.***
2. Will the vendor be a local hire? ***The vendor does not have a local office; but they are located in the California region.***

Public Comments:

Norm Groot asked how this study will be used and what it is expected to accomplish.

Nancy Isakson did not recall this as a five-year study emanating from General Plan litigation. She recalled five-years of data were required in the study...not a five-year study. Ms. Isakson asked for information about “performing a near-term assessment of the groundwater basins health and status, no later than by August 1, 2014. The evaluation after year five will look at the ability of the projects to meet water needs.

Norm Groot also questioned the interpretation of whether this should be a five-year study or a study every five years.

Nancy Isakson agreed with the statement that the Agency should be reimbursed for staff time in accomplishing Monterey County goals. It is important that the Agency manage these efforts. Further discussion should be entertained regarding the parameters of the MOU.

Board Questions/Comments (*Staff responses are emboldened and italicized*):

1. Will existing data be used or is new data required? ***New data points are not being introduced. This is a matter of examining existing data on an ongoing basis.***
2. The Agency is being presented an opportunity to approve a MOU for reimbursement of our efforts toward accomplishing Monterey County’s goals.
3. Is this for one year or five years? ***The consultant’s cost is separate and distinct from the \$75,000 per year for five years.***
4. Is the County asking us to be the Project Manager? ***Yes, we are the keepers of the data.***
5. Is the consultant being paid directly by the County? ***Yes, that is correct. We are being reimbursed for staff time.***
6. Will Agency staff select the consultant? ***With respect to professional consulting services, solicitation is not mandatory. It is our understanding the County has already selected a consultant.***
7. Monterey County is responsible for what goes into this Study.
8. Does PS-3.1 include all the terms of the Settlement Agreement? ***Yes, that is correct.***

General Manager Chardavoyne indicated it has taken 12 months to negotiate, and that it is very similar to the Fuel Spill Agreement that we negotiated with the Monterey County.

ACTION:

Motion and Second by Directors Ken Ekelund and David Hart to approve and authorize the General Manager to execute a Memorandum of Understanding with the County of Monterey for the supervision and management of the 2010 General Plan Salinas Valley Groundwater Basin Zone 2C Study.

Motion carried unanimously by those Directors present.

Director John Huerta left the dais @ 2:13 pm and returned at 2:18 pm.

- B. Consider receiving an update on discussions with the National Marine Fisheries Service (NMFS) regarding reducing the minimum release criterion from Nacimiento Reservoir from 60 cubic feet per second (cfs) to 25 cfs; and, providing direction to Staff.

Howard Franklin, Senior Hydrologist, stated the day's presentation responds to the Board's request for an update on reducing the minimum release criterion. On May 22, 2014, Staff met with NMFS to clarify the directives included in their response letter dated April 25, 2014. NMFS offered four measures the Agency could take if it decided to implement its proposed minimum release reduction:

- Ramping Rate – Stage change not to exceed two inches per hour;
- Temperature Monitoring – continuous stream temperature monitoring for as long as flow are at a reduced level (provided to NMFS monthly);
- Fish Monitoring – Summer monitoring in addition to required sampling usually performed in October;
- Supplemental Flow Release – provide additional future flow releases to facilitate successful steelhead passage; augment existing flows to improve or extend window for successful downstream migration of smolts and kelts or upstream migration of adults; contingent upon reservoir storage, existing flows in the river and weather forecasts.

NMFS staff indicated implementation of these measures does not exempt the Agency from any take of listed species that may occur. NMFS recommends that the Agency apply for an ESA section 10(a)(1)(B) permit and consider developing a habitat conservation plan.

Mr. Franklin also discussed Possible Release Options for Nacimiento River, including:

- Maximizing Conservation Releases (minimum pool by mid-August 2014);
- Maintaining 60 cfs minimum releases (minimum pool by mid-March 2015);
- Reducing minimum releases to 25 cfs (minimum pool by mid-August 2015); and,

Board Questions/Comments (*Staff responses are emboldened and italicized*):

1. Did NMFS state there was no analysis of reduced releases? ***We have about 50 years of data. NOAA Fisheries stated 25 cfs was not enough. The Biological Opinion allowed for additional study (which has not taken place).***
2. Wasn't there a 'No Project' analysis done for the EIR in SVWP? ***Yes. As a clarification, there was no analysis of "take" at 25 cfs.***

3. There are obviously costs associated with the SVWP and assessments based on beneficial use. Since beneficial use changed because of lack of water, will fees be returned to those people? *No response was provided.*
4. The NMFS letter was fairly positive, and this seems like an opportunity to study releases at less than 60 cfs.
5. We must initiate effective communications with NMFS. We need to get coverage for incidental take that will occur at some point. We should work toward 25 cfs and begin working things out. *In our consultation with NOAA Fisheries, we did not discuss who would or would not go to jail. They will not give an opinion regarding prosecution. They did say the Agency's plans seem reasonable and attainable. They do not believe the Agency will experience take if we follow their recommendations. In the event of incidental take when following the plan outlined by NMFS, we can negotiate to avoid jail time.*
6. This is an opportunity to begin building a database that NOAA Fisheries will accept, while saving water.
7. Where are you going to monitor temperature? *There are two locations thus far. We did something similar last summer during the emergency repairs.*
8. How much does a low head runner cost? Staff time for about a week. *We already have the parts. We need to bypass water at the same time...we cannot just shut down and pumping will be required.*
9. Government leaves us in the position that even you discuss with us in advance, we reserve the right to prosecute you even though you have good intentions.
10. In these types of scenarios, what do we do about the costs? What happens when those benefits are not being realized? *There is a cost to maintain the facilities. Agency costs are increasing because of the drought. It becomes a risk of doing business.*
11. Please provide a report regarding the return of assessments to ratepayers when benefits are not being realized.

Public Comments: None.

ACTION:

Motion and Second by Directors Ken Ekelund and Deidre Sullivan to direct staff to gradually reduce minimum releases to 25 cfs or as close as possible following the conditions imposed by NOAA Fisheries.

Motion carried unanimously by those Directors present.

-
- C. Consider recommending the Regional Advisory Committee's conceptual project recommendation be incorporated into the Notice of Preparation (NOP) for utilization of Water Rights Permit #11043.

Robert Johnson, Assistant General Manager, reported Staff is currently developing the NOP, making its completion the priority before the July 1, 2014 deadline. The NOP will be sent to

all responsible agencies, trustee agencies, the Office of Planning and Research and Federal agencies. The State Clearinghouse will ensure that all involved agencies reply within 30 days of receipt of the NOP.

Minimum components of NOP: project description; location; probable environmental effects of project; and range of reasonable alternatives, including a 'no project' alternative.

Minimum components of responses: significant environmental issues and reasonable alternatives and mitigation measures to be included in the EIR; whether the Agency will be a responsible agency or trustee agency for the project.

Mr. Johnson then described the RAC's Conceptual Project composed of two diversion points (Diversion Point 1 near the City of Soledad and Diversion Point 2 south of the City of Salinas), as well as a conveyance facility and delivery facility at each diversion point.

Other possible alternatives include:

- Adding storage to the permit;
- Moving or adding a diversion point;
- Running parallel processes to economize time; and,
- Evaluating whether to give up the water right permit altogether.

Board Questions/Comments (*Staff responses are emboldened and italicized*):

1. When will we estimate costs? Without the costs, we do not know which project we are going to select. ***A DEIR is due in one year. Once we determine the alternatives, we can more closely estimate costs.***
2. We must determine how much water is available for utilization as well as how often that water is available. ***That is exactly why the analysis is necessary.***
3. Where do we stand with the State and the possibility of changing some of those provisions? Having a project that is up and running every three to four years, and water available only a few months of those years, does not seem viable.
4. We might want to consider increasing utilization to the full year.
5. For financing, is there any possibility to apply for State and/or Federal grants? ***The IRWM funding area includes six regions, and we would have to share any monies received. We are at the last round of funding with \$19 million left for the six regions. The focus has been on large urban areas that receive State waters first. We have chosen not to apply because we do not have \$250K to apply for the grants.***
6. Will we see the NOP before it is submitted? ***Traditionally, NOPs have not been brought to the Board for approval. If you want to see it, we can discuss having a special Board meeting. There are opportunities for public comment...even during the NOP process.***
7. Will there be an opportunity to consider alternative projects? ***Once the NOP goes out, there can be comments provided by the public that can be evaluated and included in the EIR for analysis.***

The actual deadline for submitting the NOP is July 1; but to make sure it passes through the Clearinghouse on time, we are allowing a few extra days. After achieving that milestone, we

would then engage the State regarding the best possible project.

Public Comments:

Nancy Isakson asked whether the due date for the NOP is July 1 or July 30, and whether the Board and/or Public will review it before being sent to the State. She added that everyone wants the best project; but, determination of water availability is essential.

ACTION:

Motion and Second by Directors John Huerta and Ken Ekelund to recommend that the Regional Advisory Committee's conceptual project recommendation be incorporated into the Notice of Preparation for utilization of Water Rights Permit #11043.

Motion carried unanimously by those Directors present.

Director John Huerta left the dais at 3:15 pm and returned at 3:23 pm.

Director Mike Scattini left the dais at 3:18 pm and returned at 3:19 pm.

Director David Hart left the dais at 3:18 pm and returned at 3:20 pm.

- D. Consider recommending that the Monterey County Water Resources Agency Board of Supervisors request the Monterey County Board of Supervisors to enter into an agreement to provide funds to the Monterey County Water Resources Agency in the amount of \$1,000,000 annually for three (3) years to prepare an Environmental Impact Report for utilization of the water allocated to Water Rights Permit #11043.

Robert Johnson, Assistant General Manager, discussed prior actions of the Board of Directors and Water Resources Agency Board of Supervisors. This is a request for the Monterey County Board of Supervisors to enter into an agreement with the Water Resources Agency to provide funding for \$1 million for three years, including funding for Agency staff to manage preparation of Environmental document for Water Rights permit #11043.

Board Questions/Comments (*Staff responses are emboldened and italicized*):

1. This request lacks specificity. It might be wise to address some of the difficult questions and attach approximate dollar amounts to them in order to make the request more salable to the Board of Supervisors and public. The request should include a few off-ramps along with information as to the amount of available water. We might look at this as a decision tree, prioritizing data, etc.
2. Determining the amount of water availability is essential; but, the process must continue to move forward. The Valley has always taken steps to ensure its future.
3. It is important to build in off-ramps. We must make sure Monterey County knows that we cannot accomplish this without their funding. We should be ready to let the County know exactly what we can do without their funding.

4. An alternative process definitely needs to include a storage component.

General Manager David Chardavoyne suggested Agency Staff include a slide that outlines the amount of money expended by the Agency thus far.

Public Comments:

Norm Groot expressed the importance providing more precise information as we continue to move through the process. Mr. Groot advised the development of alternative plans in the event Monterey County does not approve funding, including incremental steps toward achieving the goals.

Nancy Isakson, Salinas Valley Water Coalition, supported comments made by Norm Groot and Directors. Off-ramps will identify issues such as additional storage. We need to take a comprehensive look at this situation and be ready to respond if the County says no.

ACTION:

Motion and Second by Directors Ken Ekelund and John Huerta to recommend that the Monterey County Water Resources Agency Board of Supervisors request the Monterey County Board of Supervisors to enter into an agreement to provide funds to the Monterey County Water Resources Agency in the amount of \$1,000,000 annually for three (3) years to prepare an Environmental Impact Report for utilization of the water allocated to Water Rights Permit #11043.

Motion carried unanimously by those Directors present.

-
- E. Consider recommending that the Monterey County Water Resources Agency Board of Supervisors request the Monterey County Board of Supervisors to enter into an agreement to provide funds to the Monterey County Water Resources Agency in the amount of \$1,500,000 annually for five (5) years to: 1) perform Salinas River stream maintenance activities; and, 2) prepare environmental documentation for the development of the Salinas River Management Program.

Robert Johnson, Assistant General Manager, provided background information related to this item, including prior actions by the Water Resources Agency Board of Supervisors and Board of Directors. Mr. Johnson reported the next step is to recommend that the Monterey County Board of Supervisors provide funding for this program. It should be noted that potential litigation exists should no actions be taken to maintain the Salinas River.

Board Questions/Comments (*Staff responses are emboldened and italicized*):

1. The Monterey County Board of Supervisors should be reminded of the costs associated with the Pajaro River flood - \$20 million.
2. Please explain the two sides of a flood. ***On one side is Monterey County and the other is Santa Cruz County. The interests are agricultural and urban, respectively.***
3. We should be prepared for "Plan B": asking for smaller amounts of money; what is the capacity to reduce the possibility of flooding with modeling; provide modeling on website;

4. Is the \$100,000 fully loaded (benefits, etc.)? *The \$100,000 funds a contracted individual, not a County employee.*
5. 2-D modeling will benefit the County's Office of Emergency Services department.
6. The Salinas River is all privately owned. If designated flood areas are determined, \$1.5 million per year is low.
7. To strengthen the proposal, it might be wise to articulate what will be performed in the first year.

Public Comments:

Darlene Din, Monterey County resident, stated the 2-D modeling and protocol are necessary sooner than later. There is match money available. The additional staff included in the request is a critical element of this program.

ACTION:

Motion and Second by Directors John Huerta and David Hart to recommend that the Monterey County Water Resources Agency Board of Supervisors request the Monterey County Board of Supervisors to enter into an agreement to provide funds to the Monterey County Water Resources Agency in the amount of \$1,500,000 annually for five (5) years to: 1) perform Salinas River stream maintenance activities; and, 2) prepare environmental documentation for the development of the Salinas River Management Program.

Motion carried unanimously by those Directors present.

10. KEY INFORMATION AND CALENDAR OF EVENTS – The Personnel and Administration and Finance Committee meetings were moved to Friday, June 20, 2014 at their regular times.

11. GENERAL MANAGER'S REPORT – General Manager David Chardavoyne reported on the following:

- a) Interlake Tunnel Project and
- b) Joint meetings among Growers, WRA and PCA and MPWMD. There will be three more meetings in June.
- c) Produce Wash Water Utilization Agreement – a three-way MOU among the Agency, City of Salinas & PCA. PCA announced it needed more time to consider the Agreement; but, extended the original two-month test period through June 30. In addition, PCA increased the cost of water from \$120 to \$178 per acre-foot.
- d) Legislative Advocacy – the Agency is utilizing Monterey County's lobbyist (JEA and Associates) for legislative advocacy. An amendment to the Monterey County's contract with JEA is required to include the Agency's scope of services. The monthly retainer is \$7,000.

Board Questions/Comments (*Staff responses are emboldened and italicized*):

1. Have there been conversations about changing the Agency Act? *Draft design/build legislation is being considered for addition to Agency Act for this project only. Tomorrow we are proposing to do pre-construction activity on the Interlake Tunnel Project as it would be beneficial to do that work when the channel is dry.*
2. The Board of Directors should be apprised of this type of action immediately.

Public Comments: None

12. COMMITTEE REPORTS – Committee Chairs had nothing additional to report.

13. INFORMATION ITEMS – Directors had no questions/comments regarding the Information Items.

14. CORRESPONDENCE – Regarding the Elkhorn Slough correspondence and associated public comments, Staff will report back to Directors.

15. BOARD OF DIRECTORS' COMMENTS – Director Ken Ekelund thanked members of the RAC for their input. He added the County Board of Supervisors created a Drought Task Force and the Agency was not present. General Manager David Chardavoyne responded that a meeting was held and the Agency was “conspicuously absent” because we were not invited. However, Agency Staff will attend the meeting scheduled for this Friday. Directors requested a presentation on the lessons learned from 1995 floods, recapping the Pajaro lawsuit and the reasons the County was liable—what did they *not* do.

16. ADJOURNMENT @ 4:25 PM by Chair Richard Ortiz.

SUBMITTED BY: Wini Chambliss
APPROVED ON: June 30, 2014

Wini Chambliss, Clerk to the Board