



Meet and Confer Update





Agenda

- Current Status
 - Parties
 - Agency and Grower Representatives
 - Proposed Project
 - Phase 1 and Phase 2

- History

- Next Steps

- Decision Points

- Completion Requirements



Current Status

The Monterey County Water Resources Agency and the Monterey Peninsula Water Management District have exchanged Drafts of Memoranda of Understanding that include the following...



Current Status

Parties

1. Monterey Regional Water Pollution Control Agency
2. City of Salinas
3. Benefitted Growers
4. Monterey Peninsula Water Management District
5. Monterey County Resources Agency



Current Status

Agency and Grower Representatives

Grower and Agency Representatives at the Negotiations	
<u>Grower Representatives</u>	<u>Agency Representatives</u>
Bob Antle	Dave Chardavoyne
Dale Huss	David Hart
Mike Scattini	Claude Hoover
Dennis Sites	Richard Ortiz
Rich Smith	Cathy Paladini





Current Status

Proposed Project, Phase 1 and Phase 2

- What:** Parties work jointly to develop multiple sources of water
- Why:** Expand CSIP and create a supply of water for the Groundwater Replenishment Project
- How:** Review the following sources –
- ✓ Agricultural wash water from Salinas industrial ponds
 - ✓ Salinas and Monterey stormwater
 - ✓ Reclamation Ditch
 - ✓ Tembladero Slough
 - ✓ Blanco Drain
 - ✓ Salinas Ponds for storage and improvements to existing Salinas Valley Reclamation Project



Current Status

Proposed Project, **Phase 1 and Phase 2**

Phase 1:

- 2,200 acre feet per year to the Growers
- 4,300 acre feet per year to the Peninsula by 2017

Phase 2:

- 4,700 acre feet per year to the Growers
- Commitment to work on Phase 2 by 2022



Current Status History

Early 2012:

- Request from PCA to allow it to utilize contractual wastewater entitlement of the WRA; the WRA Board of Directors appointed an *ad hoc* committee consisting of:
 - Staff
 - Directors
 - Members of the Public

August 2013:

- PCA announced it was pursuing Meet and Confer as called for in Amendment No. 3 between PCA and WRA

May 2014:

- PCA agreed to include representatives of the Growers and the WMD



Next Steps and Decision Points

Next Steps:

- Obtain approval from Board of Directors and Agency Board of Supervisors of a Memorandum of Understanding agreed upon amongst all Parties
- Negotiate a Definitive Agreement acceptable to all Parties

Decision Points:

- Is Salinas produce wash water existing or new source water? (Impacts cost to Growers)
- Is proposed cost of Phase 1 and Phase 2 new water acceptable to the Growers
- Are all Parties in agreement of disproportionate curtailment of water? (Will Groundwater Replenishment Project always receive its allotment of water?)



Completion Requirement

A Definitive Agreement with:

1. Firm Costs
2. Cost Allocations
3. Cost Accounting





TODAY'S ACTION

Consider Receiving an Update on the Salinas River Lagoon Management and Enhancement Plan and Provide Direction to Staff on How to Move Forward with Updating the Plan





Committee Action

- None



Prior BOD/BOS Action

- None



Financial Impact

- None for receiving this report



Discussion

- Salinas River Lagoon Management and Enhancement Plan completed March 1997

- Collaboration between the Agency and the Salinas River Lagoon Task Force
 - Task Force consisted of 27 entities
 - Federal
 - State
 - Local
 - Agriculture



Discussion (cont.)

- Plan identified 27 management and enhancement recommendations including a schedule and implementation lead

- Examples:
 - Replace existing outflow structure to OSR
 - Protect snowy plover habitat on private property
 - Establish sediment and water quality monitoring program for the lagoon
 - Evaluate reintroduction of tidewater goby



Discussion (cont.)

- 2009 MCWRA and NMFS established the Salinas River Lagoon Management Working Group Participants included:
 - MCWRA
 - NMFS
 - USFW
 - CA State Parks
 - local landowners
 - Special Interest Groups
 - Monterey Dunes Colony
 - The Nature Conservancy
 - Point Reyes Bird Observatory



Discussion (cont.)

- Working Group Participants invited but not attending regularly:
 - US Army Corps of Engineers
 - CA Coastal Commission
 - CA Fish and Wildlife
 - Trout Unlimited



Discussion (cont.)

- Working group focused on lagoon issues i.e.:
 - Sandbar Management Activities
 - Review of past Plan recommendations

- Regular meetings not held since 2013



Discussion (cont.)

- MCWRA would like to re-initialize this multi-stakeholder led effort to:
 - Formalize the Plan updated process
 - Evaluate the Working Group composition of adjust if needed
 - Working Group would:
 - Identify stakeholders concerns
 - Develop project goals
 - Identify needs and timelines to reach goals
 - Investigate funding sources (grants, etc.)



Discussion (cont.)

- Challenges
 - Many priority projects competing for staff time
 - Re-initiating Working Group not in FY14/15 budget
 - Fund 116, Zone 2C
 - FY 14/15 Program 9940 \$148,000
 - » \$19,000 for consultant (lagoon monitoring)
 - » \$11,000 for equipment rental
 - » \$96,000 for labor
 - » \$22,000 for administration (staff)



Discussion (cont.)

- Options
 - Do not re-initiate Working Group until next FY
 - Give staff some time (90 days) to:
 - Flesh out multi-stakeholder process
 - Identify Agency needs, goals and objectives
 - Develop schedule and budget
 - Determine if any Agency funds could be made available
 - Direct staff to initiate Working Group



Summary

- Salinas River Lagoon Management and Enhancement Plan needs to be reviewed/updated
- Agency would like to begin the update process
- Agency budget and staff resources make this challenging



TODAY'S ACTION

Receive an Update on the Salinas River Lagoon Management and Enhancement Plan and Provide Direction to Staff on How to Move Forward with Updating the Plan







TODAY'S ACTION

Consider:

- 1) Receiving a Report on the Status of AB 155;
- 2) The Recommendation of the Basin Management Plan Committee that AB 155 be Pulled, and that the Design-bid-build Method of Procurement be Utilized for the Interlake Tunnel Project; and,
- 3) Providing Direction to Staff





Design-build Original Draft Legislation From Legislative Counsel's Digest

- Amends Agency Act
- Authorizes Agency to construct Interlake Tunnel Project using Design-Build method of procurement
- Award of Project using competitive negotiation
 - Agency to establish procedure for selection of design-build entity
 - Contract award to be made to most responsible bidder
- Interlake Tunnel Project classified as an emergency project



AB 155 Approved By Senate Finance Committee On June 17, 2014

- Amends Agency Act
- Authorizes Agency to construct Interlake Tunnel Project using Design-Build method of procurement
- Agency is tasked to require selected contractor to enter into a Project Labor Agreement binding all contractors performing work on the project
- Agency required to utilize cumbersome P.L. 20133 procedures and requirements in bidding and awarding the Design-Build project



Conclusion of Project Management Consultant

Design-Build with a project labor agreement and P.L. 20133 requirements loses any advantage over the traditional design-bid-build method of procurement for this Project.



Basin Management Plan Committee Recommendation

- Full Board consider pulling AB 155
- Utilize the design-bid-build method of procurement for the Interlake Tunnel Project



Options Available To The Board Of Directors

- Adopt the Basin Management Plan Committee's recommendation and authorize the General Manager to request Assembly member Alejo to withdraw the legislation.
- Take no action, in which case the Bill will proceed in the Legislature.
- Take no action on AB 155, but authorize Staff to utilize the design-bid-build method of procurement for the Interlake Tunnel Project.



TODAY'S ACTION

- 1) Receive a Report on the Status of AB 155;
- 2) The Recommendation of the Basin Management Plan Committee that AB 155 be Pulled, and that the Design-bid-build Method of Procurement be Utilized for the Interlake Tunnel Project; and,
- 3) Provide Direction to Staff











Design Bid Build Steps Under Public Contract Code, Sect. 21120-21121:

21120. The provisions of this article shall apply to contracts by the Monterey County Water Resources Agency, as provided for in the

Monterey County Water Resources Agency Act.

21121. (a) All contracts for any improvement or unit of work, if the cost according to the estimate of the engineer, exceeds five thousand dollars (\$5,000), shall be let to the lowest responsible bidder or bidders.

(b) The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the agency.





Design Bid Build Steps Under Public Contract Code, Sect. 21120-21121:

21121. Continued:

(c) The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the territory of the agency inviting sealed proposals for the construction or performance of the improvement or work before any contract is entered into. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the agency.





Design Bid Build Steps Under Public Contract Code, Sect. 21120-21121:

21121. Continued:

(d) The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material in connection with the contract. The bonds shall contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of

Division 4 of the Civil Code and are subject to the provisions of that title:

(e) The board may reject any bid. The board of supervisors may, without advertising for bids, have the work done by force account if any of the following requirements are met:

(1) All the projects are rejected.

(2) No proposals are received in response to the advertisement.





Design Bid Build Steps Under Public Contract Code, Sect. 21120-21121:

21121. Continued:

(3) The estimated cost of the work does not exceed five thousand dollars (\$5,000).

(4) The work consists of channel protection, maintenance work, or emergency work. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(f) The agency may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

(g) The Monterey County Board of Supervisors may grant to the board of directors, appointed pursuant to Section 49 of the Monterey County Water Resources Agency Act (Chapter 1159 of the Statutes of 1990), any of the powers or duties granted to the Monterey County Board of Supervisors by this section.





Design Build Steps Under PL 20133:

(1) (A) The Agency shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the public improvement, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the Agency's projects. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(B) Any architect or engineer retained by the Agency to assist in the development of the project-specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.





Design Build Steps Under PL 20133:

(2) (A) Based on the documents prepared in paragraph (1), the Agency shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the Agency. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the Agency to inform interested parties of the contracting opportunity, to include the methodology that will be used by the Agency to evaluate proposals and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant objective factors that the Agency reasonably expects to consider in evaluating proposals, including cost or price and all nonprice-related factors.

(iii) The relative importance of weight assigned to each of the factors identified in the request for proposals.

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Design Build Steps Under PL 20133:

(2) (B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors other than cost or price when combined

are:

- (i) Significantly more important than cost or price.
- (ii) Approximately equal in importance to cost or price.
- (iii) Significantly less important than cost or price.

(2) (C) If the Agency chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the Agency to ensure that any discussions or negotiations are conducted in good faith.





Design Build Steps Under PL 20133:

(3) (A) The Agency shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the Agency. In preparing the questionnaire, the Agency shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information, including, but not limited to, all of the following:

(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will participate in the design-build contract, including, but not limited to, mechanical subcontractors.





Design Build Steps Under PL 20133:

(3) (A) Continued:

(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as a financial statement that assures the county that the design-build entity has the capacity to complete the project.

(iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(iv) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.





Design Build Steps Under PL 20133:

(3) (A) Continued:

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, or the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance in which an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(vii) Any instance in which the entity, or its owners, officers, or managing employees, defaulted on a construction contract.





Design Build Steps Under PL 20133:

(3) (A) Continued:

(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec. 3101 et

seq.) withholding requirements settled against any member of the design-build entity.

(ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.





Design Build Steps Under PL 20133:

(3) (A) Continued:

(x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000).

Information shall also be provided concerning any work completed by a surety during this period.

(xi) In the case of a partnership or an association that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be fully liable for the performance under the design-build contract.





Design Build Steps Under PL 20133:

(3) (A) Continued:

(xii) (I) Any instance in which the entity, or any of its members, owners, officers, or managing employees was, during the five years preceding submission of a bid pursuant to this section, determined by a court of competent jurisdiction to have submitted, or legally admitted for purposes of a criminal plea to have submitted either of the following:

(ia) Any claim to any public agency or official in violation of the federal False Claims Act (31 U.S.C. Sec. 3729 et seq.).

(ib) Any claim to any public official in violation of the California False Claims Act (Article 9 (commencing with Section 12650) of Chapter 6 of Part 2 of Division 3 of the Government Code).





Design Build Steps Under PL 20133:

(3) (A) Continued:

(II) Information provided pursuant to this subdivision shall include the name and number of any case filed, the court in which it was filed, and the date on which it was filed. The entity may also provide further information regarding any such instance, including any mitigating or extenuating circumstances that the entity wishes the county to consider.

(3) (B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.





Design Build Steps Under PL 20133:

(4) The Agency shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.

(B) The Agency may use a design-build competition based upon best value and other criteria set forth in paragraph (2). The design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of consideration given to all criteria factors: price, technical design, and construction expertise, life-cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.





Design Build Steps Under PL 20133:

(4) (B) Continued:

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this Act, upon issuance of a contract award, the Agency shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the Agency's second and third ranked design-build entities.

(v) For purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.





Design Build Steps Under PL 20133:

(4) (B) Continued:

(vi) For purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury/illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract.

This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.





Design Build Steps Under PL 20133:

(4) (B) (e) Continued:

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph

(3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the county in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the Agency.





Design Build Steps Under PL 20133:

(4) (B) (e) (3) Continued:

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(g) Lists of subcontractors, bidders, and bid awards relating to the project shall be submitted by the design-build entity to the awarding body within 14 days of the award. These documents are deemed to be public records and shall be available for public inspection pursuant to this chapter and Article 1 (commencing with Section 6250) of Chapter 3.5 of Division 7 of the Government Code.

(h) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the county.

(i) The Agency may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.





Design Build Steps Under PL 20133:

(4) (B) (e) (3) (2) Continued:

(j) Contracts awarded pursuant to this section shall be valid until the project is completed.

(k) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(l) (1) If the Agency elects to award a project pursuant to this section, retention proceeds withheld by the Agency from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.





Design Build Steps Under PL 20133:

(4) (B) (e) (3) (2) (l) Continued:

(2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the Agency and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the Agency and the design-build entity from any payment made by the design-build entity to the subcontractor.

This section shall remain in effect only until July 1, 2020 and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2020 deletes or extends that date.





Design Build Steps Under PL 20133:

(4) (B) (e) (3) (2) (l) Continued:

(2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the Agency and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the Agency and the design-build entity from any payment made by the design-build entity to the subcontractor.

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