



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

**BOARD MEMBERS:**

David Hart, Chair  
Manager  
Silvio Bernardi  
Ken Ekelund  
Claude Hoover  
Fred Ledesma  
Richard Ortiz  
Mike Scattini  
Deidre Sullivan  
*Vacant*

**STAFF:**

David Chardavoyne, Interim General  
  
Wini Chambliss, Clerk to the Board  
Patrick McGreal, Deputy County Counsel

**February 25, 2013**

**MINUTES**

**1. CALL TO ORDER**

Ken Ekelund, Chair of the Monterey County Water Resources Agency Board of Directors, called the Regular Board of Directors meeting to order @ 12:02 PM

**2. ROLL CALL**

Directors Present: David Hart, Ken Ekelund, Silvio Bernardi, Claude Hoover, Fred Ledesma, Richard Ortiz, Mike Scattini and Deidre Sullivan

Directors Absent: None

**3. ADJOURNED TO CLOSED SESSION @ 12:03 PM**

**4. RECONVENED @ 1:03 PM**

Deputy County Counsel Patrick McGreal stated the Board received informational updates on the Closed Session items; but, no reportable actions were taken.

**5. PLEDGE OF ALLEGIANCE (led by Director Deidre Sullivan)**

**6. PUBLIC COMMENTS: None**

**7. CONSENT CALENDAR**

- A. Approve the minutes of the Regular Board of Directors meeting held on January 28, 2013
- B. Approve purchase orders/contracts in excess of \$500 in January 2013 and credit card purchases over \$500 in December/January 2013
- C. Adopt a Resolution that commits Monterey County Water Resources Agency to engage, in good faith, with one or more third party entity(ies) for a long-term solution that will provide the best possible stewardship of the Salinas River

**Public Comments:**

Steve Shimek, Otter Project/Monterey Coastkeeper, discussed Consent Calendar Item 7C (*Adopt a Resolution that commits Monterey County Water Resources Agency to engage, in good faith, with one or more third party entity(ies) for a long-term solution that will provide the best possible stewardship of the Salinas River*). It is his view the resolution falls short of providing the best possible stewardship of the Salinas River. He read passages from the Agency Act into the record that he believed best defined “beneficial use” as based on the Water Code and policy. In his view, the resolution only acknowledges agricultural water supply. Mr. Shimek urged rejection of the resolution and suggested seeking a more balanced approach. He submitted copies of a Regional Water Quality Control Board, Central Coast Region document entitled “*Water Quality Control Plan for the Central Coastal Basin, June 2011*” for distribution to the Directors (attached).

Darlene Din, Agricultural Land Use and Public Policy Consultant, thanked the Agency for employing a holistic approach when considering the Salinas River in its current state. She reported in its current state, many invasive species have choked the Salinas River, resulting in less than the highest beneficial use of the water resource. She applauded the Agency for their sensitivity to private property owners looking to manage the Salinas River and their property in an appropriate manner as well as working with regulatory agencies. Ms. Din urged the Board to continue their efforts.

Nancy Isakson, Salinas Valley Water Coalition, stated she did not understand the need for the Resolution noted in Consent Calendar Item 7C especially since the Agency works well with property owners and is in the process of working on an EIR for channel clearance. Ms. Isakson questioned to what the resolution actually commits the Board. Channel clearance is absolutely critical and part of the SVWP relies on movement of water for recharge to the rubber dam for diversion. Ratepayers have paid for the SVWP along with receipt of certain benefits, which they are not receiving – one of those benefits being flood protection. Ms. Isakson asked for an explanation of the need for the resolution.

*Director Richard Ortiz left the dais at 1:08 pm and returned @ 1:12 pm.*

Interim General Manager Chardavoyne responded with the following to explain the need for the resolution: 1) It should be included as part of the EIR; and, 2) The authorizes the Agency to involve outside groups as collaborative partners in the process and also signals the Board’s intent to empower staff to work with outside parties in the Channel Maintenance program. Mr. Chardavoyne indicated the Resolution is not absolutely necessary.

Deputy County Counsel McGreal added the Resolution is aimed at including others in developing a long-term solution to maintaining the Salinas River.

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**ACTION:**

**Motion and Second by Directors David Hart and Silvio Bernardi to approve the Consent Calendar.**

**Ayes Directors Claude Hoover, David Hart, Silvio Bernardi, Mike Scattini and Deidre Sullivan**  
**Noes Directors Ken Ekelund, Fred Ledesma and Richard Ortiz**

**Motion carried.**

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**8. ACTION ITEMS**

- A. Consider approving a Memorandum of Intent By and Between the Monterey County Water Resources Agency and the Natividad Medical Center to negotiate a Definitive Agreement for the generation and benefit of electrical power from the Nacimiento Hydroelectric Plant; and, authorize the Interim General Manager to execute the Memorandum of Intent in substantially the form attached

Brent Buche, Assistant General Manager, reviewed this item stating staff has investigated many options to increase revenue through a new Power Purchase Agreement. PG&E's tariff allows a local government with Eligible Renewable Generating Facilities to credit "Benefitting Accounts" of the same Local Government. The Memorandum of Intent initiates a commitment between the Agency and Natividad Medical Center (NMC) and allows the two entities to negotiate a final Definitive Agreement.

Deal points include the following:

- The Agency grants NMC right of first refusal;
- The Agency and NMC will split the savings 50/50 between NMC's current PG&E tariff and the market value of the Agency's power supplied to NMC plus any PG&E power utilized;
- NMC will have "most favored nations" status in regard to power supply costs; and,
- The Agency will retain renewable energy credits.

The Hydroelectric Facility can accommodate NMC's energy use with a little energy remaining after the Agency fulfills their need. NMC could receive 100% renewable energy; reduce their carbon footprint (energy usage); reduce O&M cost (reduction in energy cost); and, hedge NMC against PG&E power cost increases. The bill credits would be applied on a monthly basis and could be applied to up to 50 benefitting accounts (i.e., the Agency's pump stations, CSIP wells, etc.).

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

1. This is a creative and positive approach to increase Agency revenues. It will be important to consider issues like escalating clauses and liability in the event things go wrong.
2. What happens if there is a long-term statewide drought and the Agency is unable to

fulfill NMC's energy needs? *The way the MOI is constructed, if we do not generate any power, NMC would pay the current PG&E rate. If no power is being generated, there are no credits. This is structured so that the meter is turned over to the Agency and the Agency serves as the energy manager. Each month, NMC provides the Agency an amount equal to the PG&E bill, and the PG&E bill is whatever the power supplied is minus the credits. NMC pays our credits separately to us.*

3. What is the approximate cost of monthly billing administrative charges, the one-time billing setup recovery charge and CAISO related charges? *The monthly billing administrative charge is \$30 and the one-time billing setup recovery charge is \$500. In the near future, a NMC representative and Agency staff will meet with PG&E to discuss the charges more fully. It is our present understanding there will be no transmission charges.*
4. How do we know if we have any surplus capacity? *The credits are pushed to NMC and the leftover credits are cascaded to the other accounts.*
5. Directors recommended setting aside money for future maintenance expenditures on the unit. *Staff stated this is an excellent idea for this project as well as all of the Agency's capital assets. The Agency should be depreciating capital assets to build up monies for maintenance.*
6. Will the excess power be sold? *I don't think we can sell it. It's better to have more accounts than you have power generating. If we do not generate enough power, normal PG&E costs are paid.*

Mr. Chardavoyne stated excess energy could be used to supply power to Agency facilities, even though accounting may be somewhat complex. Once this contract is in place and generating power, the Agency will increase the capacity of Unit #2 and repair/replace aging components of the hydroelectric facility, including the control system.

Public Comments: None

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#### **ACTION:**

**Motion and Second by Directors Claude Hoover and David Hart to approve a Memorandum of Intent By and Between the Monterey County Water Resources Agency and the Natividad Medical Center to negotiate a Definitive Agreement for the generation and benefit of electrical power from the Nacimiento Hydroelectric Plant; and, authorize the Interim General Manager to execute the Memorandum of Intent in substantially the form attached.**

**Motion carried unanimously.**

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- B. Consider approving an Agreement for Services with Yoshimaru Consulting in the amount of \$50,000 for Construction Management Services for Nacimiento Hydroelectric Plant emergency repairs; and, authorizing the Interim General Manager to execute the Agreement in substantially the form to that attached

Brent Buche, Assistant General Manager, reported this will be a Time and Materials contract to comply with the requirement that an on-site construction manager be available at all times. Agency Staff was unable to fulfill this requirement due to the number and complexity of projects on which we are currently working. It is anticipated the emergency repair work will be completed in four to six months. The \$50,000 will be reimbursed by

insurance.

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

1. Why is this noted as a fixed amount? ***This is just a starting point. Since Yoshimaru is on an hourly rate contract, staff expects this amount will be exceeded.***
2. Is Site Constructors a general contractor? ***Yes.*** If so, is there redundancy? ***The on-site manager signs off on the general contractor's assessment of daily activities, including time and materials and also generates his/her own report of same.***
3. Even though insurance is reimbursing the agreement, is it possible that some portions might be non-reimbursable? ***Yes. Components being repaired are being assessed individually. If the insurance assessment deems a component is not covered under the policy, the cost will not be reimbursed. Upon completion of repairs, however, the facility will be fully operational whether or not costs are reimbursed.***

Public Comments: None

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**ACTION:**

**Motion and Second by Directors Claude Hoover and Fred Ledesma to approve an Agreement for Services with Yoshimaru Consulting in the amount of \$50,000 for Construction Management Services for Nacimiento Hydroelectric Plant emergency repairs; and, authorize the Interim General Manager to execute the Agreement in substantially the form to that attached**

**Motion carried unanimously.**

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- C. Consider approving a Legal Services Agreement with Downey Brand Attorneys, LLP in the amount of \$100,000 for legal services in connection with the proposed revocation of Permit No. 11043 by the State Water Resources Control Board (SWRCB); ratifying the Expert Consulting Services Agreement with Geoscience Support Services, Incorporated in an amount not to exceed \$25,000 to provide expert consulting services in connection with the proposed revocation of Permit No. 11043 by the SWRCB; and, authorizing the Interim General Manager to execute the Agreement

Deputy County Counsel Patrick McGreal indicated Downey Brand has developed a comprehensive approach to opposing revocation of Permit No. 11043. Downey Brand enlisted the assistance of Geoscience, who has performed studies and generated reports critical to opposing revocation of the permit, confirming the need for the water to move forward with a number of projects. The Agency has been operating under a retention letter; but, a formal contract has limitations, insurance provisions and a number of other provisions not offered by a letter of retention. Today's action also ratifies the agreement made between Downey Brand and Geoscience.

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

1. Is this being paid for out of the General Liability Fund? ***I believe so.***

2. If the Agency is not paying, does the Board of Supervisors need to approve this action? *No because the Board of Supervisors previously approved a resolution authorizing the Agency to take any course of action necessary. That resolution provides the authorization for this action.*
3. Do you have an estimate of total costs? *Not at this time. If the dollar amount of this agreement is exceeded, staff will return with an amendment.*
4. What happens if the permit is revoked, will we continue to pursue this? *If the permit is revoked, Staff anticipates initiating an appeal of the revocation, and the amount dedicated for attorneys' fees would be re-examined.*
5. Does the Agency let RFPs to other entities for legal services? *The Agency has not yet done so; but, it is a good idea. The types of issues with which the Agency deals require specialization and Downey Brand possesses that expertise, especially in this case.*
6. It was suggested the Agency reach a wider pool and increase the audience from which we pull legal services to ensure we are getting the best value.
7. How much was included in this morning's budget discussion for legal services? *\$250,000*
8. Can the Agency stipulate funding will emanate from the General Liability Fund so that the Agency does not assume responsibility? *We do have money for these legal costs in the Agency's budget; but, Staff would be reluctant to take an action that would prevent the entities from being paid.*
9. Who will monitor Downey Brand's activities? *Rob Johnson*
10. The Board would love to see an RFP that includes other law firms. In this case with water rights, they may be the best firm.
11. Do we ever get a report on any of the legal issues? *Usually updates are provided in Closed Session.*
12. Directors want to be certain the Board of Supervisors adhere to their commitments when it is time for payment.

Public Comments: None

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**ACTION:**

**Motion and Second by Directors David Hart and Claude Hoover to approve a Legal Services Agreement with Downey Brand Attorneys, LLP in the amount of \$100,000 for legal services in connection with the proposed revocation of Permit No. 11043 by the State Water Resources Control Board (SWRCB); ratify the Expert Consulting Services Agreement with Geoscience Support Services, Incorporated in an amount not to exceed \$25,000 to provide expert consulting services in connection with the proposed revocation of Permit No. 11043 by the SWRCB; and, authorize the Interim General Manager to execute the Agreement**

**Motion carried unanimously.**

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**9. KEY INFORMATION AND CALENDAR OF EVENTS**

Calendar changes involved moving the Personnel/Administration and Finance Committee meetings to their regularly scheduled times on Friday, March 15, 2013.

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## 10. INTERIM GENERAL MANAGER'S REPORT

- a) Statement of Economic Interests - Directors were reminded to submit their Form 700 Statement of Economic Interest forms before April 1, 2013.
- b) Biennial Sexual Harassment and Ethics trainings - Directors were informed that Staff will complete these training by May 31, 2013. Directors must also complete these trainings by the end of the calendar year.
- c) Joint Meeting of Board of Supervisors and Board of Directors - A joint lunch meeting is scheduled for March 26, 2013. One critical issue of discussion is Salinas River Channel Maintenance.
- d) PCA Audit – Staff met with Hayashi & Wayland on February 20, 2013. Hayashi & Wayland has not yet signed the contract. However, they will begin requesting information from PCA pertaining to the audit.
- e) Three-Way MOU among the Pollution Control Agency, Marina Coast Water District and the Agency re: recycled water for urban developments related to RUWAP (Regional Urban Water Augmentation Project) – The PCA suggested the Agency agree to cancel the Three-Way MOU. However, the agreements are inextricably linked and no cancellation would occur until and unless issues related to the disputed 19,500 acre-feet of recycled water are resolved.
- f) Hydroelectric Project – Staff met with Shell Energy to explore all avenues with regard to sale of energy. They also have a market in recycled water credits.
- g) GE/Goldman Sachs/Water Resources Institute Water Summit - Attended a Summit Meeting on water in New York City (at personal expense) and received information that will prove very beneficial to the Agency. Mr. Chardavoyne reviewed the topics discussed at the meeting.

Public Comments: None

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11. **COMMITTEE REPORTS** – Committee Chairs had nothing to report.

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12. **INFORMATION ITEMS** – Directors had no questions regarding the Information Items.

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13. **CORRESPONDENCE** – Directors had no questions or comments regarding Correspondence.

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14. **BOARD OF DIRECTORS' COMMENTS**

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**Motion and Second by Directors Richard Ortiz and Mike Scattini to reconsider the action taken on the Consent Calendar on today's Agenda.**

**Motion was carried unanimously.**

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**Motion and Second by Directors Richard Ortiz and Claude Hoover to approve Items 7A and 7B on the Consent Calendar.**

**Motion was carried unanimously.**

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**Motion and Second by Directors David Hart and Silvio Bernardi to Approve Item 7C on the Consent Calendar.**

**Ayes Directors Ken Ekelund, Claude Hoover, Silvio Bernardi, David Hart, Mike Scattini and Deidre Sullivan**

**Noes Directors Fred Ledesma and Richard Ortiz**

**Motion was carried.**

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**15. ADJOURNMENT**

Director Ken Ekelund thanked the previous Board Chair, Chair David Hart, for keeping the Agency afloat during times of turmoil. The meeting was adjourned in honor of Water Resources Engineer Jim Slater @ 2:20 PM.

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SUBMITTED BY: Wini Chambliss  
APPROVED ON: March 25, 2013

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Wini Chambliss, Clerk to the Board