



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

BOARD OF DIRECTORS:

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

STAFF:

David E. Chardavoyne, General Manager
Robert Johnson, Assistant General Manager
Brent Buche, Assistant General Manager
Cathy Paladini, Finance Manager
Wini Chambliss, Clerk to the Board
Patrick McGreal, Deputy County Counsel

September 30, 2013

MINUTES

1. CALL TO ORDER/ESTABLISH QUORUM

Director Ekelund convened the Regular Board of Directors Meeting @ 11:33 AM.

Directors Present: Ken Ekelund, Claude Hoover, Silvio Bernardi, Mark Gonzalez, David Hart, Mike Scattini and Deidre Sullivan

Directors Absent: Fred Ledesma and Richard Ortiz

A quorum was established.

2. ADJOURN TO CLOSED SESSION @ 11:34 AM

3. RECONVENE MEETING

The meeting reconvened @ 1: 15 PM

Deputy County Counsel Patrick McGreal indicated the Board received information on the listed Closed Session items; but, took no reportable actions.

4. PLEDGE OF ALLEGIANCE (led by Director Claude Hoover).

5. PUBLIC COMMENTS - None

6. CONSENT CALENDAR

- A. Approve purchase orders/contracts in excess of \$500 for August 2013 and credit card purchases over \$500 in July/August 2013.
- B. Approve a professional services agreement with Spherion Staffing LLC, for a term ending January 31, 2014, for an amount not-to-exceed \$5,500, for job classifications specific to the Monterey County Water Resources Agency and not covered under the Monterey County Master Agreement with Spherion Staffing LLC; and, authorize the General Manager to execute the Agreement.

ACTION:

Motion and Second by Directors Claude Hoover and Mark Gonzalez to approve the Consent Calendar.

Motion carried unanimously by those members present.

7. ACTION ITEMS

- A. Approve minutes of the Regular Board of Directors meeting held on August 26, 2013.

ACTION:

Motion and Second by Directors Mark Gonzalez and David Hart to approve the minutes of the Regular Board of Directors meeting held on August 26, 2013.

Motion carried unanimously by those members present.

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- B. Consider approving the Monterey County Water Resources Agency's staff recommendations to assume the responsibilities of Billing and Collections for the CSIP and SRDF Projects.

Cathy Paladini, Finance Manager, reviewed this item stating the total cost to perform meter reading, billing and collections is approximately \$14,000. Agency field staff will read the meters; and the Agency's Finance team will assume the billing and collections functions of the 22 accounts. The Agency would no longer pay Monterey Regional Water Pollution Control Agency (PCA) for these services; and, the Agency would be in a position to more closely monitor accounts receivable.

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

1. Will the \$14,000 cost to the Agency be recouped? ***Two positions at the PCA perform the meter reading and billings/collections functions. The budget will be reduced by the salaries of these two individuals with the expected result of realized savings. At the very least, the cost impact would be neutral.***
2. When PCA checks the meters, they also inspect the equipment.
3. It is the Agency's responsibility to monitor and provide accountability for these funds.

4. Several Directors voiced concern over the redundancy of both the Agency and PCA reading the meters and inspecting equipment. *Staff responded that redundancy in these tasks is acceptable from an operations and maintenance perspective.*
5. Was the information from the meter reading being returned to the PCA in a timely way to bill correctly? *We would have to ask PCA to provide that information. We can only rely on the information provided since we are not directly involved in the process...and that is one of the reasons it is necessary to assume this responsibility.*

Public Comments:

Dale Huss, Ocean Mist and Chair of Water Quality and Operations Committee for the Recycling and Water Projects, recalled the Independent Auditor's findings reported a greater amount outstanding over 45 days and questioned the reason for the difference. He also asked whether assuming the responsibilities of meter reading and billing/collections would result in additional Agency expenditures. Further he questioned the overall benefit of assuming these responsibilities. *Staff responded the initial reporting was static; and, since receiving the report the receivables have been collected and/or arrangements have been made to that end.*

Nancy Isakson, Salinas Valley Water Coalition, reported the Independent Auditor's findings showed a substantially greater outstanding amount due. She questioned the reason for the difference now. Ms. Isakson also wanted to know if there would be a separate budget for the Agency's expenses or if these expenses would be dovetailed into the Agency's budget. In her opinion, the Agency would need a separate budget to identify the costs to be assumed. *Staff responded that CSIP and SRDF are already in the budget and that the particulars of budgetary reporting would be negotiated with PCA.*

Staff also reported the maintenance staff would be responsible for reading the meters and inspecting the equipment even though PCA would also continue these activities. The Agency will no longer pay PCA to perform this function.

Directors agreed an evaluation should be performed in one year to determine the cost effectiveness of assuming these responsibilities.

ACTION:

Motion and Second by Directors Mark Gonzalez and Deidre Sullivan to approve the Monterey County Water Resources Agency's staff recommendations to assume the responsibilities of Billing and Collections for the CSIP and SRDF Projects; and that an evaluation be performed in one year to determine the impact of assuming these responsibilities.

Motion carried unanimously by those members present.

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- C. Consider approving and recommending that the Monterey County Board of Supervisors approve Budget Amendment No. 2 authorizing the Auditor-Controller to amend the Monterey County Water Resources Agency's FY 2013-14 Budget for various Funds due to timing differences of expenditures between FY 2012-13 and FY 2013-14.

Cathy Paladini, Finance Manager, reviewed this item, stating this Budget Amendment deals with timing differences of expenditures between expenditures in contracts in FY 2012-13 and FY 2013-14 due to delays in the work being performed. It is important to note that the projected Cal-Am revenues were not allowed in FY 2012-13 and FY 2013-14. Thus, the Agency's unassigned balance has dropped accordingly. To make up for the gap in revenues, the Agency seeks to pursue a dry period loan in the amount of \$334,000 to cover all the work that was budgeted assuming that we received the Cal-Am reimbursement.

Public Comments:

Nancy Isakson, Salinas Valley Water Coalition, asked the funding source for the dry period loan and whether this meant the projected Cal-Am funds would be removed from the budget and included once received. *The dry period loan would come through the County Treasurer's Office, and typically based on ad valorem taxes. When the Cal-Am reimbursement is received, it would be used to repay the dry period loan.*

ACTION:

Motion and Second by Directors Claude Hoover and David Hart approve and recommend that the Monterey County Board of Supervisors approve Budget Amendment No. 2 authorizing the Auditor-Controller to amend the Monterey County Water Resources Agency's FY 2013-14 Budget for various Funds due to timing differences of expenditures between FY 2012-13 and FY 2013-14.

Motion carried unanimously by those members present.

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- D. Consider approving Amendment No. 1 to the legal services agreement with Braun Blaising McLaughlin & Smith PC in substantially the form attached hereto, to provide legal services, in an amount not to exceed \$50,000 **\$25,000**, regarding negotiating and contracting for the sale of electrical power generated by the Nacimiento Hydroelectric Project; and, authorizing the General Manager to execute the Amendment.

Patrick McGreal, Deputy County Counsel, reported this Amendment adds another \$25,000 to the original \$50,000 Agreement. This firm possesses the expertise the Agency needs to navigate the technical aspects of power purchase agreements.

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

1. Why is it so expensive? *The details are remarkable and this Agreement covers the costs associated with the failed City of Corona Agreement; the new short-term Agreement; and, the services of the Scheduling Coordinator.*
2. Are we exceeding what has been allocated? *Yes, after the City of Corona Power Purchase Agreement fell through, the Agency was scrambling to secure a short-term contract to sell power.*
3. What is the approximate income from the short-term project? *On an annual basis it is approximately \$800,000.*

4. Is this short-term contract temporary until we find someone else to purchase the power? *That is correct. The short-term contract has an expiration date of December 31, 2013. But it also has a provision for a month-to-month extension beyond that. We will utilize the short-term contract until the long-term contract is in place.*
5. What happens if we do not approve the \$25,000? They did not complete the project with the City of Corona. *It was not fault of the attorneys that the City of Corona Agreement failed. They did their job: they worked on the VIASYN contract as well as the 3 Phases Agreement. This Amendment does not include services for the long-term contract. That will come forward next month.*
6. What happens if we do not pay? *They would have the right to institute collection procedures. And, we would lose all the experience they bring to the table.*
7. Should we expect another contract another Amendment next month for the long-term contract? *Yes.*

Public Comments: None

ACTION:

Motion and Second by Directors David Hart and Silvio Bernardi to approve Amendment No. 1 to the legal services agreement with Braun Blasing McLaughlin & Smith PC in substantially the form attached hereto, to provide legal services, in an amount not to exceed ~~\$50,000~~ **\$25,000, regarding negotiating and contracting for the sale of electrical power generated by the Nacimiento Hydroelectric Project; and, authorize the General Manager to execute the Amendment.**

Motion carried unanimously by those members present.

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- E. Consider approving Amendment No. 2 to the legal services agreement with Downey Brand Attorneys, LLP in the amount of \$50,000 for legal services in connection with Water Rights Permit #11043 by the State Water Resources Control Board (SWRCB) for a total budget under the Agreement as amended not to exceed four hundred thousand dollars (\$400,000.00); and, authorizing the General Manager to execute the Amendment.

Patrick McGreal, Deputy County Counsel, reported specialized and highly skilled representation was required in the matter of the proposed revocation of Water Rights Permit 11043, and Downey Brand was selected because they possess this expertise. Mr. McGreal reminded the Board of Directors that in the recent past, individual agreements by project were developed with this firm to more accurately track legal expenditures.

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

1. How long will this amount last toward developing a project...a few months, a year? *Now that we have the permit in our possession, we need to schedule achieving the milestones as well as funding. No special funds have been set aside to work on 11043.*

2. The Board of Supervisors indicated their support to fight the revocation. Are we expecting some funding from the County? If not, at what point do we expect some funding from the County. ***We do not anticipate receiving funds from the County. The General Manager asked Dewayne Woods, Assistant CAO who was in the audience, and he indicated he was currently unaware of this discussion.***
3. Legal fees budget seems to be increasing exponentially annually. Perhaps the Board should initiate a Legal Committee to discuss legal matters and their financing.
4. When are we scheduled to discuss committee structure? ***November 14, 2013 at the Strategic Planning Workshop.***
5. Directors requested a list of the legal agreements and the issues for which we are receiving representation.

Public Comments:

Dale Huss, Ocean Mist, asked how the Agency holds the attorney firms accountable. Deputy Counsel Patrick McGreal indicated that is his responsibility. He stated he works directly with the attorneys and reviews their work products, billings and all proposed documents before they are published.

ACTION:

Motion and Second by Directors Mark Gonzalez and David Hart to approve Amendment No. 2 to the legal services agreement with Downey Brand Attorneys, LLP in the amount of \$50,000 for legal services in connection with Water Rights Permit #11043 by the State Water Resources Control Board (SWRCB) for a total budget under the Agreement as amended not to exceed four hundred thousand dollars (\$400,000.00); and, authorize the General Manager to execute the Amendment.

Motion carried unanimously.

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- F. Consider approving Amendment No. 1 to the legal services agreement with Downey Brand Attorneys, LLP in the amount of \$50,000 for legal services in connection with the Salinas River Channel Maintenance Program (SRCMP) bringing the total amount of the Agreement not to exceed \$125,000; and, authorizing the General Manager to execute the Amendment.

Patrick McGreal, Deputy County Counsel, reviewed this item also and stated similarly that Downey Brand possesses the expertise necessary to navigate through Salinas River Channel Maintenance Program issues.

1. For what period of time will these funds be used? ***Deputy County Counsel was unable to provide an answer for this question. This money is earmarked so the money is not spent elsewhere.***
2. Has the money been spent? ***No.***
3. The level of professionalism provided by Downey Brand has been exemplary.

Public Comments: None

ACTION:

Motion and Second by Directors Mark Gonzalez and Mike Scattini to approve Amendment No. 1 to the legal services agreement with Downey Brand Attorneys, LLP in the amount of \$50,000 for legal services in connection with the Salinas River Channel Maintenance Program (SRCMP) bringing the total amount of the Agreement not to exceed \$125,000; and, authorize the General Manager to execute the Amendment.

Motion carried unanimously by those members present.

- G. Consider receiving the Salinas River Stream Maintenance Program Final Environmental Impact Report; and, recommending that the Board of Supervisors hold a Public Hearing to consider certifying the Salinas River Stream Maintenance Program Environmental Impact Report and approving the Salinas River Stream Maintenance Program.

Shaunna Juarez, Project Manager for the Salinas River Stream Maintenance Program, reported there was no prior Committee action. However, between March 22, 2010 and July 22, 2013, the Board of Directors approved a professional services agreement and three amendments with Cardno ENTRIX to prepare an Environmental Impact Report. There is no financial impact to approving or certifying the program. Yet, there would be significant financial impact to implement the program. That estimate has not yet been determined.

There are three distinct processes involved in this program:

- CEQA (EIR process);
- Program approval (preferred program and/or alternatives); and,
- Permitting (Local, State and Federal).

The Board of Directors would recommend that the Board of Supervisors take the actions of holding a Public Hearing to certify a Final Environmental Impact Report and approving a program.

The Agency's responsibilities would include:

- Securing an USACE 404 Permit;
- Evaluating and prioritizing all permit applications;
- Developing an annual stream maintenance work plan; and,
- Monitoring the actual maintenance activities that are conducted.

Ms. Juarez then discussed four options with regard to recommending an actual Program:

- Accept the Staff's recommendation;
- Accept an action alternate program (i.e., a smaller program);
- Accept no program at all; or,
- Continue the program approval to another meeting.

The Nature Conservancy submitted a letter discussing a Pilot Program utilizing demonstration sites on the Salinas River near the Chualar and Gonzales bridges, which is within the SMP Program area and proposes similar activities. It is smaller in scope, however, and in the early planning stages. The Pilot Program may fall under the umbrella of the current CEQA

analysis, and staff hopes to participate in the process. Updates of all progress will be reported to the Board of Directors.

Deputy County Counsel clarified that the Board of Directors would be recommending that the Board of Supervisors take the actions of certifying the EIR and approving a program.

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

1. How much non-native vegetation is available to be removed? ***About 2,000 acres in the watershed...in clumps.***

Public Comments:

Norm Groot, Monterey County Farm Bureau, provided a letter for distribution stating the Farm Bureau and Salinas Valley Water Coalition would support program if the Agency can demonstrate that the project would maintain and not compromise the flood protection promised by the Salinas Valley Water Project. Before recommending that the Board of Supervisors certify the EIR and approve the Program, additional data should be collected to ensure the Program will not compromise the promises made to voters when approving the Salinas Valley Water Project.

Nancy Isakson noted that Agency responsibilities listed on Slide 37 failed to include that of providing flood protection. When approving the Salinas Valley Water Project, the two equally important priorities were flood protection and halting seawater intrusion. The Final EIR has been public for only ten days which is a short amount of time to thoroughly review the document. If the Supervisors certify, certain legal statutes are triggered (i.e., Notice of Determination filed, 30-day period to challenge, etc.). This will result in a litigious environment rather than one of collaboration in an effort to support a program that can achieve the goals identified through the Salinas Valley Water Project. The Farm Bureau, Salinas Valley Water Coalition and Salinas River Channel Coalition want to meet with Agency staff to discuss these issues because the flood is coming and it will be of significant impact and cost to everyone.

Benny Jefferson, Salinas River Channel Coalition Chair, stated their Board of Directors requests that the environmental documents be developed to provide greater flood capacity. A ten-year flood capacity is inadequate.

Jennifer Biringer, Director of The Nature Conservancy - Central Coast, expressed interest in seeing a model of success for balancing multiple benefits within the Salinas floodplain. The Nature Conservancy believes the EIR should not be certified at this time due to deficiencies in the project description and supporting analysis. The proposed program does not offer opportunity for coordination among growers to more systematically assess and deal with flood risks. There is no systematic way to look at risks related to habitat, water quality and water supply. While it may meet the requirements of CEQA, the project description in the EIR has been determined by permit agencies to be unpermissible. The Nature Conservancy proposes a phased approach beginning with demonstration projects at different areas of the River. She provided details of the proposed program, stating her belief this is a winning strategy that all stakeholders can support.

Steve Shimek, Executive Director of the Otter Project and Monterey Coastkeeper, recommended that this item be tabled. In his opinion, it appears that growers, environmental and conservation organizations and other agencies do not support this program. The Channel needs work; but, the issue is finding the right project. If we work together, we can find the right project and move ahead. It will not be easy or fast. However, if this is approved and moved along, a chain of events begins that makes the entire process more difficult.

Darlene Din, Monterey County resident, discussed treating the Salinas River Stream Maintenance Program from a holistic, humanistic approach.

Board Comments/Questions:

1. No one seems to be satisfied with the Final EIR. And more outreach is necessary. We need to reach out to landowners and environmental groups to get more buy in.
2. This document is not quite ready for certification.
3. Comments have been very thoughtful and rational. Key solution is working together with diverse people, diverse interests, and diverse groups. Traditional processes and ways of thinking may not work in this case. We need to think differently.
4. Comments point to the need to slow down on this issue. There seems to be no way to do anything this year. We must develop a long-term program that involves all stakeholders.
5. In developing a workable program, environmental groups and landowners must be willing to compromise or seek an alternative solution.
6. Staff should work with The Nature Conservancy to develop a viable project that is permissible.
7. This item should be tabled for at least 60 days to assess what a fair process would be.
8. Let us not throw away everything we have learned thus far; but, we should use that information to develop a workable program.
9. Everyone must be available to assist in resolving these issues within the next two months.

If a motion is made, County Counsel asked that the item be continued for two months at the Regular Board of Directors meeting.

ACTION:

Motion and Second by Directors Claude Hoover and Mike Scattini to continue this matter until the Board meeting in December 2013.

Motion carried unanimously by those members present.

8. KEY INFORMATION AND CALENDAR OF EVENTS - the Calendar remains unchanged.

9. GENERAL MANAGER'S REPORT –

General Manager David Chardavoyne reported briefly on the following topics:

- a) Strategic Planning: Session will be held at the Laguna Seca Red Bull Energy Center with a budgetary focus. Discussions will also include the structure of Standing Committees.

- b) All Hands: All staff reviewed the Agency's major issues and identified seven critical projects.
- c) October Board of Directors' meeting: Performance Indicator program will be highlighted.

Director Hoover suggested posting all Performance Indicator graphs in the Board Room at the next Board meeting.

Public Comments: None

10. COMMITTEE REPORTS – Directors made no additional comments.

11. INFORMATION ITEMS – Directors had no questions or comments regarding items submitted.

13. BOARD OF DIRECTORS' COMMENTS - None

14. ADJOURNMENT

The meeting was adjourned @ 3:12 PM.

SUBMITTED BY: Wini Chambliss
APPROVED ON: October 28, 2013

Wini Chambliss, Clerk to the Board