

**MONTEREY COUNTY WATER RESOURCES AGENCY  
BOARD OF DIRECTORS  
SPECIAL SALINAS RIVER BASIN MANAGEMENT PLAN (BMP) COMMITTEE**

Richard Ortiz, Chair  
Claude Hoover  
Deidre Sullivan  
Silvio Bernardi

Bob Antle, Public Member  
Don Chapin, Public Member  
David Bunn, Public Member

**TIME:** 8:30 a.m.  
**DATE:** Wednesday, July 9, 2014  
**PLACE:** Monterey County Water Resources Agency  
Board Room  
893 Blanco Circle  
Salinas, CA 93901  
(831) 755-4860

**REVISED MINUTES**  
**(Revisions are emboldened and double underscored.)**

1. **Call to Order** @ 8:35 a.m. by Committee Chair Richard Ortiz.

Members present: Director Richard Ortiz, Director Claude Hoover, Director **Silvio Bernardi**, Bob Antle, Don Chapin

Members absent: Director Deidre Sullivan and **David Bunn**

A quorum was established.

2. **Public Comment**  
None

3. **Approve the Minutes of the BMP Committee meeting held on June 18, 2014**

Committee Member Don Chapin stated that there was one correction to the Minutes in that he was present at the meeting however the Minutes do not show that to be the case.

**Committee Action: On motion and second of Committee members Don Chapin and Richard Ortiz the Committee approved the Minutes of the BMP meeting held on June 18, 2014**

4. **Receive update on Water Rights Permit #11043 activities, and provide direction to Staff.**

Robert Johnson, Assistant General Manager reported that the Notice of Preparation is out. The State Clearinghouse received the NOP before the deadline and therefore released it early. The NOP is currently in the public comment period of the process. That period will run until August 11<sup>th</sup> at 4:00 p.m. Two public meetings are scheduled for next week Tuesday, at 2:30 at the Agency and Wednesday at 6:00 p.m. in Soledad.

Nancy Isakson asked that information be provide on what will be presented to the Board of Supervisors at the Joint Meeting on July 29<sup>th</sup>. Mr. Johnson responded that on July 29,

2014 the Board of Supervisors will receive the funding request and budget, previously brought before the BMP Committee in the June meeting, in the amount of \$1M for three years which would cover environmental documentation. Staff is looking at some initial questions and possible amounts. A scope is being prepared to go out to consultants to develop some of the preliminary information requested by another board member and to have the costs broken out so that the County could possibly provide smaller dollar amounts instead of the \$1M a year so that the initial work can begin.

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

- a. Does this include the amount of water that will be available? ***Part of the analysis will be the additional analysis on the amount of water available.***

**Committee Action: On motion and second of Committee members Claude Hoover and Richard Ortiz, the Committee received the update on Water Rights Permit #11043.**

**5. Receive update on the Interlake Tunnel Project, and provide direction to Staff.**

David Chardavoynne, General Manager, reported that now, because of the drought, the tunnel project has come into the forefront at the Agency. He noted that Nacimiento fills three times faster than San Antonio. Currently the lake levels are low and connecting the two reservoirs makes sense at this time since it is easier to tunnel above the water than below water. The Agency has requested authorization to move forward with the entire project at \$2½ million from Monterey County. The Board of Supervisors of the Agency and of the County decided to allow an initial draw of \$500,000 for preliminary engineering, water rights analysis and program management. Future draws require the Agency to go back to BOS, and Staff will be providing an update on July 29<sup>th</sup>. It is estimated that once begun, the project will take one to two years to complete at the cost of approximately \$25 million, dependent upon environmental documents requirements. Staff is working through the feasibility of the project.

On June 3, 2014 the Board of Supervisors granted the Agency a \$500,000 advance from the County General Fund. Should the project go forward the money is to be paid back possibly with a Prop. 218 or grant. If the project does not move forward the County is at risk. Between June 3<sup>rd</sup> and July 1<sup>st</sup>, County staff was searching for another way to finance the project. On July 1<sup>st</sup>, the Board of Supervisors decided to take the money from the contingency fund of the General Fund. There was a delay of one month getting the funding agreement in place. The Agency is currently processing the contract with EPC for program management and it should be fully executed today.

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

- a. Let's hear the public comments since there are concerns over the details of the project. Then the Committee members can comment.

**Public Comment**

Nancy Isakson, Salinas Valley Water Coalition, requested a copy of the slide presentation. She noted that it is important for the public to know what the next steps will be. It was her understanding that Staff, on July 29<sup>th</sup>, was to provide to the Board of Supervisors a preliminary engineering report which would include a hydrologic analysis

which would indicate how to manage the water between the two reservoirs, along with water rights. She agreed that it was a good idea to look at piecing out the funding. She asked what will happen once it rains and work cannot occur on the project. The Salinas Valley Coalition concern is to look at things in a comprehensive way and determine what would be the best project for utilizing time and limited resources. She questioned how this project will impact what water is available under 11043.

Ron Chesshire, Monterey/Santa Cruz Building and Construction Trades Council, commented that their concern regarding the project revolves around the procurement process. He questioned the process of selecting EPC, whether there was a process or not, citing the Little Brooks Act. He also stated that there were a lot of misstatements in the minutes and may provide a letter to answer and clarify those misstatements.

Norm Groot, Monterey County Farm Bureau echoed much of what Nancy Isakson stated concerning the need to know how much water is available, issues surrounding 11043 and how the tunnel project may impact it given the constraints on the water currently. He asked to get a better understanding of the timeline involved which appears to be very aggressive. He noted that it takes a long time to get an EIR document developed and there is a need to consider alternatives if it rains, for example. How much does it add to the cost of the project and what happens to the water? These questions need to be addressed. He hopes that more answers will come out in the EIR process and through the Notice of Preparation as it impacts our ability to manage our reservoirs during construction as well after.

Roger Moitoso, Arroyo Seco Vineyards, questioned how much water was to be moved through the tunnel.

David Chardavoyne, responded that the purpose of the feasibility study is to determine that very answer and also answer the questions that Mr. Groot and Ms. Isakson had. Staff hopes to have the answers to report to the Board of Supervisors on July 29. The contract with EPC needs to be completed so they can engage a hydrological firm to do the modeling necessary to determine the answer to these questions. There has now been delay of a month and a half out of two months to prepare the answers for the report. There are weekly progress meetings to drive the project, staff is focused but it is behind schedule.

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

- a. Regarding the manner in which EPC was hired – was it done in a manner that keeps the Agency out of trouble. Who was involved in the selection process. ***The engagement of EPC was after an independent review of different firms available and also a due diligence check on EPC. The Agency has the ability to sole-source professional services under the law. This is a project where the Agency wanted to engage the best in terms of talent to work on this particular project. The Leadership Group, LLC was involved in the selection and they had engaged an outside consultant to work on the selection which was then presented to the Agency. The Agency did due diligence and agreed with the result.***
- b. Who participates in the weekly project status meetings? ***Agency Staff members include David Chardavoyne, Rob Johnson, Cathy Paladini, Howard Franklin, and***

*sometimes Elizabeth Krafft. Also EPC and an EPC hydrology sub-consultant called ECorp, and John Hollenbeck, sub-consultant to EPC, who was the Project Manager on the pipeline in San Luis Obispo County. Also invited is Bob Antle, head of Leadership Group, LLC to participate if he desires.*

- c. Is the role of the Leadership Group, LLC to be the champion of this project to conceptualize this as a feasible project, do a feasibility analysis, put the resources together, provide political connections and provide impetus to the project and then hand off the project to the Agency and the County for consideration? *Yes.*

Committee Member Antle stated that that was the role of the Leadership Group, LLC and then EPC was brought in to manage the project with their great depth of knowledge and experience. *There is no one in the Agency or the County that has experience in tunneling projects. EPC is an extension of Staff. They are managing the project.*

- d. There are a lot of questions that indicate that the public is not fully informed and their concerns have not been fully addressed. Is it correct to say that we are not committed at this point other than the County evaluation and funding of the initial study, environmental overview and engineering study? *That's what this preliminary engineering study is for. If we cannot answer those questions on water rights or the conclusion is that it is a no go, then that's it. The contract with EPC is structured that way.*
- e. Any studies on the tunnel before? *Not in the last three years. The 1991 report called the Water Capital Facilities Plan has information about the project and costs related to it.*
- f. Did the Agency approve the expenditure for this report? *Yes. The Agency approved proceeding ahead with the funding up to construction recommending to the Board of Supervisors of the Agency to proceed and authorized entering into the agreement. County Counsel has advised in open session before the Board of Supervisors that contracting with EPC is legal.*
- g. Are there any circumstances where the Agency would be at financial risk for this initial phase? *The Agency is at risk not for the money for the preliminary engineering report but time invested in this project.*

#### Public Comment

Norm Groot commented that this is the first he has heard of Leadership Group LLC and is somewhat disturbed that the process has not been more public. He noted that there is a lot of support throughout the community for this project and he stressed the importance of keeping the project in the public forum.

Nancy Isakson seconded Norm Groot's comments. She noted that Salinas Valley Coalition believes it has not been properly vetted in the public process. She suggested opening a public workshop on this project which will provide ideas on how to move the project forward.

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

- a. Is the workshop a possibility? *Staff should get direction from this Committee on whether we should have a workshop and when. We need to get the information first and then a workshop can be established.*

**Committee Action: On motion and second of Committee members Don Chapin and Claude Hoover, the Committee received the update on the Interlake Tunnel Project and recommended that a workshop be established.**

**6. Receive update on the status of AB 155 and provide direction to Staff.**

David Chardavoyne provided the update of AB 155. He noted that this is a bill that was created to promote the procurement method of design/build where a project is bid out once for the design and the construction, which differs from the practice of design/bid/build. The Agency initially thought design/build was preferable to move the project along faster. The draft legislation sponsored by Assemblyman Alejo, amends the Agency Act authorizing the Agency to construct the Interlake Tunnel Project using the design/build method of procurement and the project would be awarded using competitive negotiation. It authorizes the Agency to establish a procedure for selection of the design/build entity and the contract awarded to the most responsible bidder.

The bill that has come out of the Senate Finance Committee amends the Agency Act. It authorizes the Agency to construct the Interlake Tunnel Project using the design/build method but adds a couple items to it and digresses from what was originally requested. First, the Agency would be tasked to require the contractor to enter into a Project Labor Agreement binding all contractors performing work for the project. Second, the Agency is required to use Public Law 20133 Procedures and Requirements in bidding and awarding the design/build project. Essentially, the procedures are so intricate and complicated they destroy any advantage in using design/build. There is no use in using design/build if it is going to take longer to use that method than it would be using the design/bid/build method.

The bill came out of Committee and will go to the Floor in early August. Assemblyman Alejo stated he would pull out the Project Labor Agreement language if a labor agreement is negotiated before August however it might as well be left in the agreement. Currently there is no contractor and we won't know if we have a project until we get preliminary engineering done. It is the Agency's and EPC's point of view that Public Law 20133 Procedures and Requirements render the design/build for this project not worthwhile.

Committee questions/comments (*Staff responses are emboldened and italicized*):

- a. With regard to PL 20133, is that something that could be imposed on us if we are not asking for any legislative action? *If we don't ask for legislative action we would not be using design/build and 20133 is specific for design/build so it would not apply.*
- b. Do we need to, or want to, go forward with something that does not provide any benefit? If we do not go forward, what other kinds of issues are we going to have if we are not seeking a legislative solution – what are our best options? *Our limited*

*resources are time and dollars. Working with legislation that we are not going to use going forward does not make sense. Assemblyman Alejo has asked the Agency stay on board with this bill because he sponsored it and there is pressure from the County to do the same. There may be a possibility of securing grants in the future to fund this project. Mr. Chardavoyne's recommendation is to not pursue the legislation any longer because of the 20133 requirements and proceed to get the project done using the design/bid/build method instead.*

- c. The project should be built whether it rains in the future or not.
- d. Where is the Gant Chart located? *It was distributed at the June 3<sup>rd</sup> Joint Meeting of the Monterey County Water Resources Agency Board of Supervisors and Board of Directors and is on the Agency website.*
- e. It would benefit all if the public can see the Gant chart and see updates posted to it. *It can be made available in terms of updates.*

#### Public Comment

Kevin Dayton, President and CEO of Labor Issues Solutions stated he is very interested to hear about the letter that is going to come from Ron Cheshire of the Monterey County Building and Construction Trades Council about what happened and suggested that when it does he appends a letter from Ceasar Diaz of the State Building Construction Trades Council since it is his belief that the legislature and the lobbying operation is heavily involved. He provided the Committee with a list of questions that may be answered in the letter since, he believes, there is much confusion about what's going on or what happened.

Mr. Dayton then suggested that the Committee should have a special investigative hearing. He suggested that perhaps the Monterey County Grand Jury should look into how this particular language was put in. He indicated that in his opinion the Minutes are correct.

Ron Chesshire stated that on May 27, 2014 he was part of a meeting with Dr. Bauman and Mr. Chardavoyne and where he was urged to lobby for AB 155. He understood the nature of the project and that it is important for the valley, the economy and businesses in the area. He stated that his organization did all it could to support it. It was their understanding that design/build was going to be utilized because it would speed up the process. He noted that the project is unique because it sits in two counties. Eighty percent of the project will be in San Luis Obispo County. There will be two different prevailing wage determinations by the State of California because it is in two counties. He stated that it is basically a mining operation, tunneling through a mountain and there are safety and worker issues to be addressed. The best way is through a PLA. If the legislation goes through his organization will be at meetings and provide opinions. He stated that AB 155 is good to have in case Prop 218 doesn't go through. He asked that the Committee weigh the options carefully. Workers need to have a say and the best way is through a Project Labor Agreement.

Nicole Goehring, Associated Builder and Contractors, noted that there are about four weeks left before the Legislature goes back in session and finish it bill review process.

She suggested either make amendments to the bill to have the PLA removed or request to oppose the bill and ask it to be pulled. The PLA increases costs and there will be less bidders. She stated that two Supervisors, Calcagno and Salinas, stated that Assemblyman Alejo is willing to pull the PLA out of the bill if something is worked out at the local level. The bill was amended July 2nd after those comments were made on July 1<sup>st</sup> and the project labor agreement language still exists in that bill. She stated that traditional design/build in State legislation never includes this project labor agreement language. This is the first of its kind and it is setting a very dangerous precedent throughout the State. She recommended that the project labor agreement language be removed. She also suggested holding a study session to learn more about project labor agreements and learn what their impacts are.

Norm Groot commented that this is all due to unintended consequences. That it all goes back to allowing the community to have a part of this process. The community would probably have vetoed going to Sacramento as it did for the Channel Maintenance Project. Mr. Groot noted that he spent numerous hours on the phone and via email with Alejo and staff and Canella and staff about terminology used in this bill to characterize the groundwater basin. The interveners have fought hard to make sure that the terminology used is consistent with the Agency Act. He stated that if this bill goes through and changes the terminology that is used the community and the Agency open themselves up to a lot of unintended consequences for this project as well as others. He noted that currently he has no authorization from his board to recommend pulling this bill but that's what it appears at this point.

Nancy Isakson supported Mr. Groot's comments. With regards to the language she stated that she believes it had been formatted incorrectly. The copy she has from the State's office is correct. The language is "Salinas River Groundwater Basin" instead of "Salinas Valley Groundwater Basin". She asked when the decision was made to ask our legislators to design language that allows us to do a design/build process. She doesn't recall this being discussed in committee or board meetings. She state that when the stakeholders are involved the process works, when they are not involved the process fails.

Name unintelligible, construction worker, stated that he believes that design/build is less risk for the Agency as that responsibility is passed on to the contractor. A project labor agreement would force the contractor to use local workers. It would a good opportunity to create apprentice jobs.

Caesar Lara, Monterey Bay Central Labor Council, stated that the time is now for the tunnel to be built. AB155 give us the opportunity to get this project done utilizing State money. The PLA is fine, and if it can be done locally that would be better. The project is needed for the economy and the residents. The more light that is shined on the project the better. A workshop is appropriate.

Dick Johnson on behalf of the San Luis Obispo Builders Exchange, stated most of his members are non-union. They are in favor of the project but oppose the PLA. He provided to the Committee a copy of a letter from Senator Monning.

Committee questions/comments (*Staff responses are emboldened and italicized*):

- a. After hearing the public comments it appears that when the Committee considers these things that we have a clear set of objectives. It appears from the comments made that we have not been in control of our destiny on that. We must make certain that we can afford the cost for the intended benefits of the project. AB155 is not supported and should be pulled. More information needs to be provided and could be included in workshops.
- b. Why wouldn't we go with the traditional design/bid/build procurement process? In light of the public's interest in what's important for this community we should slow this process down so there is plenty of time for the public to comments. Rushing AB 155 is huge mistake. It does not yield a better product. Project labor agreements are not fair. You do not need a PLA to set a wage determination. That can be done specifically for this project between the two counties. Specifications are written for a reason and in this case you would write the specification that puts teeth in the enforcement of labor and in the hiring of local workers. Recommend that we move toward pulling AB155 and go back to the traditional method of procurement for this project.
- c. Would support the bill but supports the idea of pulling that section the bill that addresses labor and bringing it back to the County of Monterey to negotiate. The bill would provide future protection for this Agency and the project to come. If a Prop. 218 fails, the bill in place may get the support for funding if available. Supporters of this bill would support funding for the project. Assemblyman Alejo indicated he would pull the language if a local agreement is reached. A suggestion was made to recommend to the full Board to either remove the language or not support the bill. The full board has to make that decision.
- d. What part of the Agency Act gets amended? *The bill changes the language of the Agency Act in that it adds that we have design/build authorization for this particular project. The Agency will also have to follow PL20133 requirements and standards for the project if we use design/build and also has a PLA for the project.*
- e. If we don't use design/build are there other obligations or impacts to the Agency. Any negative impact on us? *Don't believe so, the Agency has the option; but it adds a "Christmas tree ornament" onto the Agency Act in regard to the tunnel project.*
- f. The board should ask for a legal opinion.

**Committee Action: On motion and second of Committee members Don Chapin and Claude Hoover, the Committee received the update on the AB155 report and recommended to the Board that AB155 be pulled, and that the Board reconsider the procurement process and move on to a design, bid and build procurement process. Committee Chair Richard Ortiz opposed the Motion. Committee member Bob Antle abstained because of his involvement with Assemblyman Alejo to get grants and funding in the future.**

**Wini Chambliss, Clerk of the Committee, noted that the Motion has failed because there are not a sufficient number of Committee members approving; it is out of the number of members of the Committee, not of the members present.**



**The Chairperson recalled the vote.**

**The Committee took another vote and the Motion passed with Committee Chair Ortiz opposing the Motion. There were no abstentions.**

**7. Set next meeting date and discuss future agenda items.**

The next meeting will be held on August 13, 2014 @ 8:30 a.m. The Committee requested that workshops will be scheduled to inform the public of the progress of the project. There could possibly be a workshop held on July 28<sup>th</sup>, the day of the Board of Directors meeting. If it occurs, a notice will be provided.

**8. Adjournment @ 10:10 a.m.**

**Submitted by: Alice Henault**

APPROVED