



# Monterey County

Government Center  
Monterey Room, 2nd Floor  
168 W. Alisal St.  
Salinas, CA 93901

## Action Minutes Legislative Committee

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Tuesday, March 21, 2017

8:30 AM

Monterey Room, 2nd Floor

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### NOTICE OF SPECIAL MEETING

#### Call to Order

The meeting was called to order at 1:35 p.m.

**Public Comment Period: Members of the public may address comments to the Committee concerning each agenda item. Timing of public comment shall be at the discretion of the Chair.**

There were no public comments.

#### **Water Resources Agency: White Bass Legislative Proposal - David Chardavoine & Robert Johnson**

1. Receive a report and consider approval, or provide other direction, to the Water Resources Agency regarding the purpose of the legislative proposal to address the Interlake Tunnel Project White Bass issue.

**ACTIONS:**

- Received report on need for legislation and status of discussions with the Water Resources Agency (WRA) and California Department of Fish and Wildlife (CDFW).

#### **Nossaman LLP: White Bass Legislative Proposal - Jennifer Capitolo**

2. Receive a report and provide direction regarding continued legislative efforts and strategy to advance the legislative proposal to address the Interlake Tunnel Project White Bass issue.

**ACTIONS:**

- Received reports on meetings regarding the legislation with CDFW, Secretary Lairds staff; Committee staff, and various environmental groups;
- Provided Nossaman and WRA with direction to continue to pursue the legislative path for one-month and return to the committee if further direction was needed;
- Received public comment from Bill Light;
- Received public comment from Nancy Isakson (attached);
- Received public comment from Steve McIntyre (attached)

#### Adjournment

The meeting adjourned at 2:25 p.m..

DAdamo, Annette x3045

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**From:** Steve McIntyre <smcintyre@montereypacific.com>  
**Sent:** Tuesday, March 21, 2017 2:45 PM  
**To:** DAdamo, Annette x3045  
**Subject:** Letter to the Legislative Committee

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

Hi Annette,

I was advised to send this letter to you for distribution to the legislation Committee?

Thanks,

Steve

Dear Honorable Chair Mary Adams;

As a representative for the Forebay subbasin on the newly established Groundwater Sustainability Agency I would like to express my concerns regarding the process of vetting new groundwater projects now that GSA has been established.

As you know the GSA will be responsible for developing a Groundwater Sustainability Plan (GSP) for the basin, so ultimately the GSA will be making decisions regarding new projects. The new GSA looks forward to working with WRA agency staff to develop new projects to achieve a sustainable water supply. Undoubtedly, the GSA will hire its own consultants and experts during the GSP process and it remains to be seen exactly how the two agencies will collaborate but nonetheless, the WRA staff will continue to be an invaluable resource.

The WRA seems focused on pushing for the construction of the tunnel project without yet having provided the community, or the GSA, an independent cost benefit analysis. I would like to request that you put any decision on this project on hold until such time as the USGS model is complete, and our GSA has the opportunity to review the specifics of this or any additional projects that come forth.

Certainly, it is an understatement to say that the tunnel project has been a divisive issue here in the county. On the other hand, the formation of the GSA has been a collaborative success celebrated statewide. I believe it is important to the process that we allow the new GSA, with its collaborative momentum and diverse set of stakeholders, to vet the tunnel project in a objective manner that will mitigate further acrimony. Personally at this juncture I am neither for or against any particular project, including the tunnel, because I don't think anyone (including myself) has been fully briefed on the issue. It is premature to focus and push for a project, especially one that aggravates old wounds. I believe the process of compromise would be better served if the GSA takes the lead.

I recently heard an attorney say "war is easy collaboration is hell". certainly I've been accused of being idealistic and naïve but I genuinely believe this is an opportunity to heal old wounds and build new bridges.

Sincerely,

Steve McIntyre

**From:** N. Isakson <nisakson@mbay.net>  
**Sent:** Wednesday, March 22, 2017 8:25 AM  
**To:** DAdamo, Annette x3045  
**Cc:** Chiulos, Nick x5145  
**Subject:** BOS Legislative Committee  
**Attachments:** WRA BOS 103116 PS.pdf; bos\_legs\_committee\_030717 a.pdf.pdf; MCWRA BOS 101716.pdf

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

Annette, please forward the attached letters to the BOS legislative Committee as requested.

Thank you

Nancy

Nancy Isakson, President  
Salinas Valley Water Coalition  
(831) 224-2879  
(831) 886-1528 FAX

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# Salinas Valley Water Coalition



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(831) 674-3783 • FAX (831) 674-3835

Transmitted via Email

Monterey County Board of Supervisors  
Legislative Committee  
168 W. Alisal St.  
Salinas, Ca 93901

7 March, 2017

Re: Agenda Item #1

Dear Committee Members;

This letter is sent on behalf of the Salinas Valley Water Coalition (SVWC) regarding Monterey County Water Resources Agency (Agency) request to your Committee. The MCWRA is asking for assistance in seeking a legislative solution to the white bass component of the Agency's Interlake Tunnel and Spillway Modification Project (Project).

The staff report states the Agency is seeking a legislative remedy because their efforts to identify and gain approval of a viable solution to date with California Department of Fish and Wildlife have been unsuccessful, which could jeopardize the 'project' timeline.

The SVWC believes the Agency's request is premature for the following reasons:

1. Currently there is no approved 'project', only a proposed project. We all know that the ultimate project that is approved is often very different than that initially proposed.
2. There is the potential to prejudice the environmental review process for the proposed 'project'; a process that hasn't begun, let alone completed.
3. The critical modeling for the proposed 'project' hasn't begun, yet alone completed.

We understand the Agency's concern about delays in the proposed project's timeline, but it is important that we have completed environmental review and modeling of the proposed project so the decision-makers and the public can fully understand the potential benefits and associated environmental impacts of the proposed project. The proposed legislative solution appears to pre-empt this process and we ask that any potential legislative solution be delayed until the CEQA process and modeling are completed.

We thank you for your consideration of this request.

*Nancy Isakson*

Nancy Isakson, President  
Salinas Valley Water Coalition



# Salinas Valley Water Coalition



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Hand Delivered

Monterey County Water Resources Agency  
Board of Supervisors

17 October, 2016

Re: Agenda Item #5

Dear Chair Parker and Boards of Supervisors:

The Salinas Valley Water Coalition's membership comprise approximately 40% of irrigated agriculture in the basin.

The Interlake Tunnel Project was initially advertised by the MCWRA as providing 60,000 afy of new water. The estimate dropped precipitously, without explanation, to 8,000 – 20,000 afy of new water. More recently, the General Manager stated that even if no new water was provided by the project, the flood protection benefit alone was cause for moving forward on the project. Those flood control benefits have now also been drastically reduced and stated to not be reliable. At every turn when the MCWRA is challenged, the story changes, benefits are greatly reduced or wildly exaggerated.

Of more concern is the amount of money being allocated by the MCWRA that would appear to be misappropriations of the funds collected from Zone 2C assessments to finance the Interlake Tunnel Project, while the reservoirs and dams are left nonfunctional and in a state of great disrepair. For example, four of the lower gates are currently not functional even though Zone 2C assessments are duly collected. We just received the first rain of the season and the Nacimiento Reservoir is not ready for potential winter time releases as required in the SVWP EIR and as recently discussed with the Agency and NMFS.

The Interlake Tunnel Project is not yet supported by science, the engineer's report or modeling to demonstrate any benefit. The Salinas Valley Water Coalition has repeatedly asked for scientific basis to support the project. Yet, even after hundreds of thousands of dollars of taxpayers' money being spent to "study" the Interlake Tunnel Project, the only thing the public has learned from those expenditures of precious taxpayers' money is that the project is "feasible," i.e., that the project can be built. The MCWRA has yet to answer whether the millions of dollars to be spent on this project are worth the benefit. Instead, MCWRA is locked in on autopilot, continuing to move forward while disregarding that important cost-benefit analysis.

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***Mission Statement: The water resources of the Salinas River Basin should be managed properly in a manner that promotes fairness and equity to all landowners within the basin. The management of these resources should have a scientific basis, comply with all laws and regulations, and promote the accountability of the governing agencies.***



Despite the millions of dollars collected from the Zone 2C landowners, the landowners have not received the promised benefits from the Salinas Valley Water Project. The Salinas Valley Water Project has been significantly downsized. The maintenance of the dams and reservoirs have been ignored and left in disrepair, resulting in limited operational capacity. The MCWRA illegally stored water it does not have a right to, operates the Salinas Valley Water Project only consistent with the biological opinion, ignoring the underlying reoperation project that is covered under the incidental take statement -- all causing injury to Zone 2C landowners. Additionally, the MCWRA has taken steps to establish the hydroplant beyond an incidental benefit, which will further impact the Salinas Valley Water Project, without performing environmental review under CEQA.

For the above stated reasons, the Salinas Valley Water Coalition opposes the Interlake Tunnel Project. Any misappropriated monies from the Zone 2C fund must be returned for use towards the Salinas Valley Water Project.

Respectfully submitted,



Nancy Isakson, President

Keith Roberts, Chair  
Wente Vineyards

Roger Moitoso, Vice-Chair  
Arroyo Seco Vineyards

Bill Lipe, Director  
Rava Ranches

Lawrence Hinkle, Director  
Mission Ranches LLC

Bill Hammond, Director  
Kendall-Jackson Vineyard

Steve McIntyre, Director  
Monterey Pacific Inc.

Bob Martin, Director  
Gill Ranches/Rio Farms

Rodney Braga, Director  
Braga Farms

Brad Rice, Director  
Salinas Land Company

Michael Griva, Past Chair  
Franscioni-Griva

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File No. 6450.02

October 31, 2016

### Via Hand Delivery

Monterey County Water Resources Agency  
Board of Supervisors

Re: Senate Bill No. 831 – Interlake Tunnel Project

Honorable Board:

This firm represents Salinas Valley Water Coalition, and this letter is to comment on the grant set forth in Senate Bill No. 831 for the Interlake Tunnel Project. Should the Monterey County Water Resources Agency (“MCWRA”) accept the grant for Ten Million Dollars (\$10,000,000.00) from the California Department of Water Resources without first preparing an Environmental Impact Report (“EIR”), MCWRA would be in violation of California Environmental Quality Act (“CEQA”). (Pub. Resources Code §§ 21000 et seq.)

The MCWRA acknowledges that the Interlake Tunnel Project would pose significant environmental impacts and requires an EIR. The MCWRA entered into three reimbursement agreements with Monterey County for a total of Three Million Dollars (\$3,000,000.00). The MCWRA also used approximately Three Hundred Thousand Dollars (\$300,000.00) from Zone 2C assessment funds to fund the Interlake Tunnel Project. The funds were to be used for environmental review, a portion of which has been used to prepare an Initial Study. The Initial Study made clear that there would be significant environmental impacts associated with the Project requiring an EIR. Rather than completing the EIR, the MCWRA continues to proceed with other aspects of the Project with a specific schedule towards construction of the Project.

As a result of MCWRA’s extensive lobbying efforts, Senate Bill No. 831 sets aside ten million dollars in grant “for the purposes of a water conveyance tunnel between Lake Nacimiento and Lake San Antonio and spillway modifications at Lake San Antonio.” With the actions already taken by MCWRA, and through the acceptance of the ten million of taxpayers’ dollars, the MCWRA would in essence be approving the Interlake Tunnel Project by further



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committing itself toward “a definite course of action” without an EIR in violation of CEQA. (14 CCR §15352(a); *Save Tara v. City of West Hollywood* (2008) 45 Cal. 4<sup>th</sup> 116, 130.) Section 15352(a) of the CEQA Guidelines defines “approval” as follows,

“Approval” means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person.... Legislative action in regard to a project often constitutes approval.

Moreover, the MCWRA meets the two-prong test set forth in *Save Tara* and repeated in *Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4<sup>th</sup> 549, which is used to ascertain whether a public agency has committed itself to a project before conducting the requisite environmental review. In meeting the first prong, the Agency has already and will continue to (if it accepts the ten million-dollar grant) circumvent the environmental review process by “postposting the environmental analysis” to permit “bureaucratic and financial momentum to build irresistibly behind the project, thus providing a strong incentive to ignore environmental concerns.” (*Laurel Height Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 395.) For the second prong, the MCWRA has “committed significant resources to shaping the project,” (*Saltonstall, supra*, 234 Cal.App.4<sup>th</sup> at p. 567) as described previously. Accordingly, the MCWRA has committed and will continue to commit itself to this Project without the requisite EIR in violation of CEQA.

As demonstrated in Exhibit A, the political and financial momentum has already built, and key decisions to proceed with the Interlake Tunnel Project have been made without an EIR. For example, the MCWRA is currently risking losing water rights under its Permit 11043 by not proceeding with any of the water projects under that permit because it chose to commit itself to the Interlake Tunnel Project. By postponing the EIR until after it receives ten million of taxpayer dollars, the MCWRA would be foreclosing any meaningful options to abandon or alter the Project and meaningfully consider other alternatives, and such action would “undermine CEQA’s goal of transparency.” (*Save Tara, supra*, 45 Cal. 4<sup>th</sup> at p. 136.)

The Coalition is not the only entity that has expressed concerns about how quickly MCWRA is proceeding with the Interlake Tunnel Project toward construction. The National Oceanic and Atmospheric Administration’s National Marine Fisheries Service submitted a letter to the Agency dated October 6, 2015 (“NMFS Letter”), that states in relevant part the following:

[C]onstruction [of the Interlake Tunnel Project] is scheduled to begin in June 2017 (and end July 2018). This schedule seems highly ambitious and it is unclear if the schedule allows for consideration of the above concerns for threatened steelhead. We have the sense that the project is moving quickly ahead either without much analysis, or at best, with analyses that have not been shared. (Emphasis added.)



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NMFS Letter is included as Exhibit B.

Finally, the NMFS Letter states that the Interlake Tunnel Project could exacerbate steelhead reproduction impact "by further reducing steelhead passage days and channel aggradation." MCWRA's (mis)operation of the reservoirs has already resulted in habitat degradation for steelhead by failing to perform the required mitigation measures set forth in the Salinas Valley Water Project ("SVWP") EIR and Addendum. The mitigation measures require winter flow releases to allow for adult passage. As discussed in NMFS Letter, "[T]he SVWP has not provided increases in adult passage opportunities (i.e., zero passage days occurred in 2013 when there could have been 16 days if MCWRA made adequate reservoir releases.)"

To avoid ongoing violations of Sections 7 and Section 9 of the Endangered Species Act in connection with the operation of the SVWP and to act consistent with the mitigation measures set forth in the SVWP EIR, the MCWRA must perform releases this upcoming winter to allow for adult steelhead passage. Included as Exhibit C, please find the relevant portions of the SVWP EIR, its Addendum and the NMFS Biological Opinion. The Administrative Record should include the modeling performed to develop the flow prescription for steelhead trout that is set forth in the Biological Opinion.

Respectfully submitted,



Pamela H. Silkwood

Cc: Department of Water Resources (w/out Exhibit "A")  
State Water Resources Control Board (w/out Exhibit "A")  
National Marine Fisheries Service (w/out Exhibit "A")