

County of Monterey

Board of Supervisor Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901



Meeting Agenda - Final

Tuesday, January 31, 2023

9:00 AM

<https://montereycty.zoom.us/j/224397747>

Board of Supervisors of the Monterey County Water Resources Agency

Chair Supervisor Luis A. Alejo - District 1
Vice Chair Supervisor Glenn Church - District 2
Supervisor Chris Lopez - District 3
Supervisor Wendy Root Askew - District 4
Supervisor Mary L. Adams - District 5

Important Notice Regarding COVID 19

Based on guidance from the California Department of Public Health and the California Governor's Office, in order to minimize the spread of the COVID 19 virus, please do the following:

1. While the Board chambers remain open, you are strongly encouraged to observe the live stream of the Board of Supervisors meetings at <https://monterey.legistar.com/Calendar.aspx>, <http://www.mgtvonline.com/>, www.youtube.com/c/MontereyCountyTV or <https://www.facebook.com/MontereyCoInfo/>

If you attend the Board of Supervisors meeting in person, you will be required to maintain appropriate social distancing, i.e., maintain a 6-foot distance between yourself and other individuals.

2. If you choose not to attend the Board of Supervisors meeting but desire to make general public comment, or comment on a specific item on the agenda, you may do so in two ways:

a. submit your comment via email by 5:00 p.m. on the Monday prior to the Board meeting. Please submit your comment to the Clerk of the Board at cob@co.monterey.ca.us. In an effort to assist the Clerk in identifying the agenda item relating to your public comment please indicate in the Subject Line, the meeting body (i.e. Board of Supervisors Agenda) and item number (i.e. Item No. 10). Your comment will be placed into the record at the Board meeting.

b. you may participate through ZOOM. For ZOOM participation please join by computer audio at: <https://montereycty.zoom.us/j/224397747>

OR to participate by phone call any of these numbers below:

- +1 669 900 6833 US (San Jose)**
- +1 346 248 7799 US (Houston)**
- +1 312 626 6799 US (Chicago)**
- +1 929 205 6099 US (New York)**
- +1 253 215 8782 US**
- +1 301 715 8592 US**

Enter this Meeting ID number: 224397747 when prompted. Please note there is no Participant Code, you will just hit # again after the recording prompts you.

You will be placed in the meeting as an attendee; when you are ready to make a public comment if joined by computer audio please Raise your Hand; and by phone please push *9 on your keypad.

3. You are encouraged to participate via Zoom; however, additional seating with audio of the Board meeting will be available in the Monterey Room on the 2nd floor of the County Government Center is needed for overflow.

Aviso importante sobre COVID 19

Según la orientación del Departamento de Salud Pública de California y la Oficina del Gobernador de California, para minimizar la propagación del virus COVID 19, haga lo siguiente:

1. Mientras las cámaras de la Junta permanezcan abiertas, se le recomienda encarecidamente que observe la transmisión en vivo de las reuniones de la Junta de Supervisores en <https://monterey.legistar.com/Calendar.aspx>, <http://www.mgtvonline.com/>, www.youtube.com/c/MontereyCountyTV o <https://www.facebook.com/MontereyCoInfo/>

Si asiste a la reunión de la Junta de Supervisores en persona, se le pedirá que mantenga un distanciamiento social apropiado, es decir, mantenga una distancia de 6 pies entre usted y otras personas.

2. Si elige no asistir a la reunión de la Junta de Supervisores pero desea hacer comentarios del público en general, o comentar sobre un tema específico de la agenda, puede hacerlo de dos maneras:

Envíe su comentario por correo electrónico antes de las 5:00 p.m. el lunes anterior a la reunión de la Junta. Envíe su comentario al Secretario de la Junta a cob@co.monterey.ca.us. En un esfuerzo por ayudar al Secretario a identificar el ítem de la agenda relacionado con su comentario público, por favor indique en la Línea de Asunto, el cuerpo de la reunión (es decir, la Agenda de la Junta de Supervisores) y el número del ítem (es decir, el Ítem No. 10). Su comentario se colocará en el registro en la reunión de la Junta.

B. puede participar a través de ZOOM. Para participar en ZOOM, únase por audio de computadora en: <https://montereycty.zoom.us/j/224397747>

O para participar por teléfono llame a cualquiera de los siguientes números:

+1669900 6833 EE. UU. (San José)

+ 1346248 7799 EE. UU. (Houston)

+1312626 6799 EE. UU. (Chicago)

+1929205 6099 EE. UU. (Nueva York)

+1 253215 8782 EE. UU.

+1 301 715 8592 EE. UU.

Ingrese este número de identificación de la reunión: 224397747 cuando se le solicite. Tenga en cuenta que no hay un código de participante, simplemente presionará # nuevamente después de que la grabación le indique.

Se le colocará en la reunión como asistente; cuando esté listo para hacer un comentario público si se le une el audio de la computadora, levante la mano; y por teléfono, presione * 9 en su teclado.

3. Se le anima a participar a través de Zoom; sin embargo, se necesitarán asientos adicionales con audio de la reunión de la Junta en el Salón Monterey en el segundo piso del Centro de Gobierno del Condado para el desbordamiento.

NOTE: All agenda titles related to numbered agenda items are live web links. Click on the title to be directed to the corresponding Board Report.

PUBLIC COMMENT: Members of the public may address comments to the Board concerning each agenda item. The timing of public comment shall be at the discretion of the Chair.

Please refer to the separate agenda for the Board of Supervisors

Pursuant to AB361 some or all Supervisors may participate in the meeting by telephone or video conference.

9:00 A.M. - Call to Order

Roll Call

Additions and Corrections for Closed Session by County Counsel

Closed Session

1. Closed Session under Government Code section 54950, relating to the following items:
 - a. Pursuant to Government Code section 54956.9(d)(1), the Board will confer with legal counsel regarding existing litigation:
(1) *California-American Water Company, et al. v. Marina Coast Water District, et al.* (San Francisco County Superior Court Case No. CGC-15-546632)

Public Comments for Closed Session

The Board Recesses for Closed Session Agenda Items

10:30 A.M. - Reconvene on Public Agenda Items

Roll Call

Additions and Corrections by Clerk

General Public Comments

Scheduled Matters

2. Consider approving the Advance Funding Agreement between the County of Monterey and the Monterey County Water Resources Agency in an amount not-to-exceed \$7,000,000 to provide cash flow assistance for emergency protective measure projects mitigating damage to Agency facilities caused by the 2022/2023 winter storm events.

Attachments: [Board Report](#)
 [Advance Funding Agreement MCWRA](#)

Read Out from Closed Session

Adjournment



County of Monterey

Item No.1

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: CS 23-006

January 31, 2023

Introduced: 1/23/2023

Current Status: Agenda Ready

Version: 1

Matter Type: Closed Session

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a. Pursuant to Government Code section 54956.9(d)(1), the Board will confer with legal counsel regarding existing litigation:

(1) *California-American Water Company, et al. v. Marina Coast Water District, et al.* (San Francisco County Superior Court Case No. CGC-15-546632)



County of Monterey

Item No.2

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: WRAG 23-014

January 31, 2023

Introduced: 1/25/2023

Current Status: Scheduled AM

Version: 1

Matter Type: WR General Agenda

Consider approving the Advance Funding Agreement between the County of Monterey and the Monterey County Water Resources Agency in an amount not-to-exceed \$7,000,000 to provide cash flow assistance for emergency protective measure projects mitigating damage to Agency facilities caused by the 2022/2023 winter storm events.

RECOMMENDATION:

It is recommended that the Water Resources Agency Board of Supervisors:

Approve the Advance Funding Agreement between the County of Monterey and the Monterey County Water Resources Agency in an amount not-to-exceed \$7,000,000 to provide cash flow assistance for emergency protective measure projects mitigating damage to Agency facilities caused by the 2022/2023 winter storm events.

SUMMARY/DISCUSSION:

An atmospheric river event commencing December 26, 2022 and continuing into January of 2023 damaged many facilities of the Monterey County Water Resources Agency (“Agency”) including portions of the Pajaro Levee; the slidegate and levee road of the Salinas River Lagoon; the Nacimiento Reservoir spillway plunge pool; and other flood control facilities and supporting infrastructure. Agency staff’s preliminary repair cost of damages to all Agency facilities is estimated at \$16 million. Staff is in the process of further estimating these costs over coming weeks, in consultation with the Federal Emergency Management Agency (“FEMA”) and State Office of Emergency Services (“OES”) teams.

The Agency is seeking cash flow financing from the County of Monterey in an amount not to exceed \$7,000,000. These funds will provide an immediate financing source to allow the Agency to immediately implement priority emergency protective measures to control erosion at Nacimiento Dam spillway plunge pool (estimated at \$3.5 million); make repairs to the Pajaro Levee (estimated at \$1.5 million); and make repairs to the Salinas Lagoon Road and slidegate (estimated at \$2 million). Staff believe that these critical projects should be completed during this winter season. Agency reimbursement of County funds under the proposed Advance Funding Agreement would be repaid by reimbursements from FEMA, CDAA, and/or other resources available to the Agency, which is not anticipated to occur in Fiscal Year 2022-23.

Available fund balances within the Agency budget are limited to funds due to restrictions specific to the Agency zones; and therefore, County cash flow financing is necessary to immediately fund the identified urgency protective measure projects. These costs exceed fund balances of Agency’s

unrestricted funds.

OTHER AGENCY INVOLVEMENT:

The Agency has coordinated with the CAO Budget Office and the Office of County Counsel on drafting and funding the recommended agreement.

FINANCING:

The Agency is currently refining the estimate of storm damage to its facilities in consultation with FEMA, and State OES. Estimated expense at the Nacimiento Reservoir spillway plunge pool is \$3.5 million, repair at Pajaro Levee is \$1.5 million, and repair to Salinas Lagoon Road and slidegate are \$2 million.

FEMA has indicated that it will reimburse 100% of expenses of debris clearing and emergency protective measures completed by February 25, 2023 and reimburse 75% for projects completed thereafter. Advancement of funds under the Advance Funding Agreement would be paid with reimbursements from FEMA and others to the Agency, not expected to occur in Fiscal Year 2022-23.

Agency staff is in the process of further refining damage and repair costs. When the refined cost estimates are available, the Agency will return to the Board for appropriation increases in Agency Funds 116-9300-WRA006-8485, 112-9300-WRA002-8484, 111-9300-WRA001-8267 and 122-9300-WRA012-487.

Prepared by: Nan Kyung Kim, Finance Manager III, (831) 755-4861
Monterey County Water Resources Agency

Approved by: _____
Lew Bauman, Interim General Manager, (831) 755-4860

Attachment:

1. Advance Funding Agreement



County of Monterey

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: WRAG 23-014

January 31, 2023

Introduced: 1/25/2023

Current Status: Agenda Ready

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OTHER AGENCY INVOLVEMENT:

The Agency has coordinated with the CAO Budget Office and the Office of County Counsel on drafting and funding the recommended agreement.

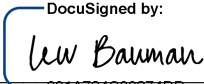
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Prepared by: Nan Kyung Kim, Finance Manager III, (831) 755-4861
Monterey County Water Resources Agency

Approved by: 
631A724C33274DD...
Lew Bauman, Interim General Manager, (831) 755-4860

Attachment:

1. Advance Funding Agreement

ADVANCE FUNDING AGREEMENT

between

THE COUNTY OF MONTEREY

and

THE MONTEREY COUNTY WATER RESOURCES AGENCY

for

**FUNDING OF EMERGENCY PROTECTIVE MEASURE PROJECTS RESULTING FROM
STORM AND FLOOD DAMAGE INCURRED DURING THE DECEMBER 2022 -
JANUARY 2023 ATMOSPHERIC RIVER STORMS**

This advance funding agreement (“Agreement”) is entered into as of the effective date herein by and between the County of Monterey and the Monterey County Water Resources Agency.

WHEREAS, the County of Monterey (“County”) is a political subdivision of the State of California with duties and responsibilities set forth in various provisions of the California Constitution, and state laws and regulations; and,

WHEREAS, the Monterey County Water Resources Agency (“Agency”) is a flood control and water agency established in 1990 by special act of the state legislature codified at Water Code Appendix Chapter 52, and is the successor to the Monterey County Flood Control and Water Conservation District established in 1947, also by special act of the state legislature; and,

WHEREAS, the County and Agency (separately a “Party”, collectively the “Parties”) are separate legal entities, with separate and distinct duties and responsibilities as set forth in their respective organic laws; and,

WHEREAS, the Agency owns and operates two reservoirs: Lake San Antonio, located in the County of Monterey, and Lake Nacimiento, located in the County of San Luis Obispo (the “Reservoirs”); a portion of the Pajaro River Levee located in Monterey County as the non-federal sponsor to the United States Army Corps of Engineers; the Old Salinas River Slide Gate and Access Road; as well as numerous flood control and related facilities throughout Monterey County; and,

WHEREAS, the Reservoirs provide water storage for, and flood control protection to, the Salinas River Groundwater Basin (“Basin”) downstream of the Reservoirs, and also improve water supply and groundwater recharge in the Basin; the Pajaro River Levee provides flood protection to

the adjacent farm lands and community of Pajaro; and the Old Salinas River Slide and Road provides flood control and habitat enhancement capacity to waters of the United States; and,

WHEREAS, an atmospheric river event occurred commencing December 26, 2022 and continued into January of 2023, and damaged many Agency facilities including portions of the Pajaro Levee; the slidegate and levee road of the Salinas River Lagoon; and the Nacimiento spillway plunge pool and an access road to Nacimiento Dam (“Emergency Projects”). Preliminary repair cost of damages to Agency facilities is estimated at \$16 million, and will be further refined over coming weeks, in consultation with Federal Emergency Management Agency (“FEMA”) and State Office of Emergency Services (“OES”) teams; and,

WHEREAS, on January 10, 2023, the Board of Supervisors of the County ratified a Proclamation of Local Emergency due to an atmospheric river event commencing December 26, 2022, and continuing into January of 2023 throughout Monterey County; and,

WHEREAS, the Agency has identified a number of emergency protective measures for these Emergency Projects to eliminate or lessen immediate threats to lives, public health, and safety, and lessen immediate threat of significant additional damage to improved public and private property in a cost effective manner; and,

WHEREAS, Agency costs for the Emergency Projects are anticipated to be repaid with reimbursements by FEMA, the California Disaster Assistance Act (“CDAA”), and/or other State of California resources; and,

WHEREAS, the Agency currently does not have the financial resources to immediately complete the Emergency Projects; and,

WHEREAS, the Emergency Projects will provide significant public benefits to the citizens of the County by protecting their health, safety, welfare and property; and,

WHEREAS, due to the benefits accruing to the County and the Agency as a whole from the Emergency Projects, the County is prepared to advance the necessary funds for such work on the condition that the County shall be repaid such funds incurred implementing the Emergency Projects as reimbursed by FEMA, CDAA, or other State of California resources; **NOW THEREFORE**,

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the County and the Agency agree as follows:

1. Reimbursement and Funding.

Subject to all other terms of this Agreement the County shall advance to the Agency up to the sum of \$7,000,000 (the “Advance”) for the purpose of funding the Emergency Projects.

The Advance shall be provided to the Agency periodically as necessary for cashflow purposes upon receipt of Agency documentation verifying the need for the expenditures (e.g. invoices from contractors). Documentation shall be submitted to the County Administrative Office.

2. Effective Date and Term.

The effective date of this Agreement shall be the date last signed by either of the Parties. This Agreement shall be effective until all funds are repaid by the Agency to the County pursuant to Paragraph 3 or the Agreement is terminated early pursuant to Paragraph 4.

3. Repayment.

To the extent permitted by law, at such time as the Emergency Projects are reimbursed from other sources, the Agency shall repay to the County the Advance (or the portion thereof having been paid to the Agency at the time of reimbursement of the Emergency Projects) within 15 business days receipt of the reimbursement. If there is no such outside reimbursement, or portion of reimbursement, the Advance or respective portions of the Advance shall be considered a County Contribution without repayment for the public purposes set forth in the recitals, and no reimbursement to the County shall be required for those portions of the Advanced not reimbursed from other sources. Notwithstanding the foregoing, the County shall have no obligation to provide any Advances beyond June 30, 2027.

4. Early Termination.

Should the County Board of Supervisors, in its sole discretion, determine that the Emergency Projects or a portion of the Emergency Projects: A) have been abandoned by the Agency; or B) are unlikely to be implemented; then the County Board of Supervisors may terminate this Agreement upon 10 days written notice to the Agency. The County shall have no obligation to make any further Advance for work performed after the date of termination, and any Advance already paid to the Agency shall not be repaid and shall be considered a County Contribution without repayment.

5. No Additional Payments.

Except as may be specifically agreed to in writing by the County, or as specifically set forth in this Agreement, the County shall not be liable to the Agency for any further advances, payments, costs or expenses of any kind with respect to the Emergency Project other than the Advance outlined in this Agreement.

6. No Further Obligations.

Nothing in this Agreement binds the County to any further obligations with respect to the Emergency Projects.

7. Lead Agency.

Nothing in this Agreement shall obligate the County to be the Lead Agency for purposes of the California Environmental Quality Act regarding the Emergency Projects. The Agency shall be the Lead Agency for all such purposes.

8. Indemnification.

To the maximum extent permitted by law, the Agency shall defend, indemnify and hold harmless the County, its officers, agents, and employees, from and against any and all demands, claims, causes of action, suits, judgments, liabilities, liens, losses, damages, expenses, fines, penalties and assessments (collectively, "damages") incurred or sustained by the County arising from or related to the performance by the Agency of its obligations under this Agreement excepting therefrom any damages arising from or related to the gross negligence or willful misconduct of the County, its officers, agents, or employees.

9. General Provisions.

A. No Assignment. The Agency shall not assign or transfer this Agreement, or any part thereof, without the written consent of the County, nor shall the Agency assign any monies due or to become due to the Agency hereunder without the previous written consent of the County.

B. Independent Contractor. Nothing in this Agreement shall be construed or interpreted to make the Agency, its employees, agents or contractors anything but independent contractors, and in all the Agency's activities and operations pursuant to this Agreement, the Agency, its employees, agents and contractors shall not, for any purposes, be considered employees or agents of the County.

C. Authority to Bind the County. It is understood that the Agency, in the performance of this Agreement, has no authority to bind the County to any agreements or undertakings with respect to any and all persons or entities with whom the Agency deals in the course of business.

D. Notices. All notices regarding performance under this Agreement shall be sent by hand delivery, electronic mail, or U.S. mail (certified mail, return receipt requested and postage prepaid) to the persons and addresses listed below. Either party may change the designated person by notice to the other party. If sent by U.S. mail, delivery shall be presumed 5 days following deposit with the U.S. Postal Service.

<p>Agency: Lew Bauman General Manager 1441 Schilling Pl., North Bldg., Salinas, CA 93901 (831) 755-4860</p> <p>Copy to: Kelly L. Donlon, Assistant County Counsel 168 W. Alisal St., 3rd Floor Salinas, CA 93901 (831) 755-5313</p>	<p>County: Sonia De La Rosa County Administrative Officer 163 W. Alisal St., Third Floor Salinas, CA 93901 (831) 755-5115</p> <p>Copy to: Leslie J. Girard, County Counsel 168 W. Alisal St., 3rd Floor Salinas, CA 93901 (831) 755-5365</p>
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E. Modifications. This Agreement may be modified or amended only by written agreement of the parties. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the parties hereto.

F. No Waiver. No covenant or condition of this Agreement can be waived except by the written consent of the County. Forbearance or indulgence by the County in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the Agency. The County shall be entitled to invoke any remedy available to the County under this Agreement or by law or in equity despite said forbearance or indulgence.

G. Sole Agreement. This Agreement contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this Agreement shall be of no force or effect excepting a subsequent modification in writing, signed by the parties hereto.

H. Venue. If any party herein initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that venue thereof shall be the County of Monterey, State of California.

I. Construed Pursuant to California Law. The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California.

J. Authority to Execute. The persons executing this Agreement on behalf of their respective party represent and warrant that they have, or have received, the proper authority to so execute this Agreement.

IN WITNESS WHEREOF, the County and the Agency have caused this Agreement to be executed:

Monterey County Water Resources Agency County of Monterey

By _____
Lew Bauman
Interim General Manager

By _____
Sonia M. De La Rosa
County Administrative Officer

Date : _____

Date : _____

Approved as to form:

Monterey County Water Resources Agency County of Monterey

By _____
Kelly L. Donlon
Assistant County Counsel and Agency
Counsel

Leslie J. Girard
County Counsel

Date : _____

Date : _____