



# Monterey County

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## Board Report

Legistar File Number: 15-1352

December 15, 2015

**Introduced:** 12/7/2015

**Current Status:** Agenda Ready

**Version:** 1

**Matter Type:** General Agenda Item

The County Administrative Office recommends that the Board of Supervisors consider the following in support of progress on the Interlake Tunnel and San Antonio Dam Spillway Modification Projects (collectively, the "Projects"):

- a. Receive a report from the Water Resources Agency General Manager regarding the potential use of a Public Private Partnership ("P3") for the Projects under Government Code Sections 5956 - 5956.10, the California Infrastructure Financing Act and continue item "a" to the January 12, 2016 Board of Supervisors meeting to consider whether to authorize the Monterey County Water Resources Agency General Manager to issue a Request for Proposals ("RFP") for a P3 contractor;
- b. Approve the Third Reimbursement and Funding Agreement between the County of Monterey and the Monterey County Water Resources Agency, in the amount of \$971,000, for Environmental Consulting Services Phase I work and Program Management Services for the Projects, substantially in the form of Agreement attached and subject to approval by County Counsel;
- c. Approve and authorize the Auditor-Controller to amend the FY 2015-16 Adopted Budget reducing appropriations in the amount of \$971,000 from CAO-General Fund Contingencies, 001-1050-8034, Appropriation CAO020 and increasing appropriations in CAO-Contributions-Other Agencies, 001-1050-8029, Appropriation CAO007, 7013. (4/5th vote required); and
- d. Direct the Water Resources Agency to continue making monthly progress reports to the Budget Committee, County Counsel and Board of Supervisors regarding overall project progress, activities of the Agency to continue to procure grant funding, and progress with California Department of Fish and Wildlife to resolve the white bass transfer issue.

**RECOMMENDATION:**

Consider the following in support of progress on the Interlake Tunnel and San Antonio Dam Spillway Modification Projects (collectively, the "Projects"):

- a. Receive a report from the Water Resources Agency General Manager regarding the potential use of a Public Private Partnership ("P3") for the Projects under Government Code Sections 5956 - 5956.10, the California Infrastructure Financing Act and continue item "a" to the January 12, 2016 Board of Supervisors meeting to consider whether to authorize the Monterey County Water Resources Agency General Manager to issue a Request for Proposals ("RFP") for a P3 contractor;
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Projects, substantially in the form of Agreement attached and subject to approval by County Counsel;

c. Approve and authorize the Auditor-Controller to amend the FY 2015-16 Adopted Budget reducing appropriations in the amount of \$971,000 from CAO-General Fund Contingencies, 001-1050-8034, Appropriation CAO020 and increasing appropriations in CAO-Contributions-Other Agencies, 001-1050-8029, Appropriation CAO007, 7013. (4/5th vote required); and

d. Direct the Water Resources Agency to continue making monthly progress reports to the Budget Committee, County Counsel and Board of Supervisors regarding overall project progress, activities of the Agency to continue to procure grant funding, and progress with California Department of Fish and Wildlife to resolve the white bass transfer issue.

#### SUMMARY:

The Interlake Tunnel project would connect Lake Nacimiento reservoir with Lake San Antonio reservoir via an underground tunnel, and allow water that would normally be lost over the Nacimiento dam spillway to be stored in San Antonio. A second project, the San Antonio Spillway Modification, would increase the storage capacity of Lake San Antonio for that purpose. Taken together, the tunnel and spillway modification provide significant water storage capacity increases as well as flood control protections. The County of Monterey, through a series of funding and reimbursement agreements, has advanced funds for design and permitting work on the project with the expectation of repayment pending a future Proposition 218 (Prop 218) assessment of benefited property owners or other financing mechanism to repay funds to the County provided through the Funding and Reimbursement Agreements, and fully finance the project. This action would provide additional funding for preparatory work on both projects. In addition, the Agency General Manager will make a presentation on the P3 form of project delivery for the Board consideration.

#### DISCUSSION

##### Background:

The Interlake Tunnel and spillway modification is estimated by the WRA to cost approximately \$68M. The WRA requested funds from the County in order to begin work on the project design and permitting. In response to that request the County entered into several funding and reimbursement agreements with the Agency. The first agreement was entered into on July 2, 2014 in an amount not to exceed \$500,000. These funds were for preparatory work, and were advanced on the condition that the County be repaid if the project is financed through an assessment district or other financing mechanism.

At a December 9, 2014 Special Joint meeting of the Board of Supervisors, the Board of Supervisors of the Water Resources Agency, and the Water Resources Board of Directors, the Agency was authorized to proceed with work on the Interlake Tunnel project. Direction given by your Board of Supervisors on December 9, 2014 authorized an additional commitment of \$2.5M to perform geotechnical and final design engineering, permitting and environmental approval, financing plan preparation and implementation; and implementation and project management services. Based on direction given, a total of \$3.0M has been conceptually committed by the County to date. These are conceptual commitments; the actual identification

of fund sourcing and specific authority to fund comes via the funding and reimbursement agreement as a legal document entered into by the two government agencies: the County and WRA.

Accordingly, on March 17, 2015 a second funding and reimbursement agreement was entered into between the County and WRA in the amount of \$600,000. This funding was authorized for preliminary design/engineering, water rights analysis, spillway modification feasibility, technical support and project management support. The Second Funding and Reimbursement Agreement expires January 31, 2016. A Third Funding and Reimbursement Agreement was requested by the WRA to allow environmental and project management work to be initiated pending a final decision on overall Interlake Tunnel project approach, plus allow for preparatory work on the Spillway Modification Project.

To support the continuing progress on the Projects, staff recommends that the Board of Supervisors consider three separate, though interrelated, items. The first is a potential change in the financing/construction approach from the method defined in Assembly Bill (AB) 155 for design-build of the Interlake Tunnel Project, and from the design-bid-build method for the Spillway Modification Project, to a P3 approach, as authorized by California Government Code Sections 5956 - 5956.10 (California Infrastructure Financing Act), for both Projects. A copy of those code sections is enclosed for the Board's review.

To date, the Agency lacks grant funding to implement the Interlake Tunnel Project in accordance with AB 155, and does not have sufficient funding to implement the Spillway Modification Project in accordance with the design-bid-build method of procurement. The California Infrastructure Financing Act allows the Agency to enter into a contract with a private entity (a Design-Build-Finance contractor) to provide private investment capital and services to plan, develop, design, finance, and construct the Projects; the so-called P3 form of project delivery. The Agency believes that the P3 approach, if authorized by the Board of Supervisors, would provide the opportunity to capitalize on the current interest of private P3 investment entities for water-related projects.

The Agency has concluded that, due to a lack of sufficient available funding, the P3 approach provides the best option to deliver the Projects in the shortest time and lowest reasonable cost, without an interruption in the Projects schedules. The recommendation is to receive the report and continue consideration of the P3 approach to the January 12, 2016 Board meeting.

The second item before the Board of Supervisors is the approval of a Third Reimbursement and Funding Agreement ("Agreement"). This Agreement will obligate the County to reimburse the Agency up to an additional \$971,000 (\$1.1 million having been previously authorized for reimbursement) for the purpose of funding an agreement for environmental consulting services and initiation of Phase I of those services; and program management services for activities up to and including a vote on the creation of an assessment district for the purpose of financing the Projects pursuant to Proposition 218. A draft Third Reimbursement and Funding Agreement is attached. Of the funding requested in the Third Reimbursement and Funding Agreement, approximately \$820,000 would be committed to environmental consulting services and approximately \$151,000 to program management.

The actions described above are integrated and necessary to continue moving forward with the Projects. The Agency Board of Directors voted to recommend these actions to the Board of Supervisors at its meeting on December 7, 2015.

**Issues Related to Interlake Tunnel Project**

The following issues related to the subject agreement are briefly described below:

- 1. Impact to County finances and relative certainty of repayment:** There is no “guarantee” that the funds advanced by the County through the Funding and Reimbursement Agreements will be repaid. To date, this amount is \$1.1M; today’s request action would increase that total to \$2,071,000. It is anticipated that further funding and reimbursement requests will be made by the Agency to the County for this project. Total dollar amount is driven by the cost required to bring the project to a Proposition 218 vote, which is in turn driven by the method and total cost of financing via either a P3 approach, tax exempt bond financing, or some other approach. Should a Proposition 218 vote fail, there will be no source of funding to reimburse the County. In addition, if a P3 approach is followed, the terms of the agreement with the P3 contractor are subject to negotiation. There is no guarantee that a P3 contractor will be willing to reimburse all County upfront costs which were funded through the Funding and Reimbursement Agreements. If tax exempt bond financing is used, in order to comply with IRS regulations, in order to be reimbursed pre-issuance expenses, the tax exempt bonds must be issued within 3 years of adoption of a resolution to reimburse. Such a resolution was adopted by the both WRA Board of Directors and the County Board of Supervisors on June 16, 2015. If tax exempt bonds are selected as the financing vehicle, such bonds must be issued by June 16, 2018 or full repayment will be compromised. In addition, it is believed that costs of bringing the project to a Proposition 218 vote the tax exempt bond as the financing vehicle will be significantly higher than the P3 approach, potentially in the realm of an additional \$2M to \$4M. Under the tax exempt bond financing scenario, it is envisioned that the County would be asked to put up additional funding.
- 2. Debt financing costs:** Ron Holly, County Debt Manager, estimates that annual debt service for the Projects using tax exempt bond financing will be approximately \$5.5M. This is based on an estimated project cost of approximately \$68M with a reserve of \$11M. The reserve cost is driven up by the fact that both Moody’s and Fitch have reduced WRA’s credit rating to “A+”. This rating impacts the cost of borrowing for the Projects. In discussions with Mr. Holly, it is highly recommended that, upon approval of this recommendation, WRA hire a financial advisor to evaluate debt issuance and financing options in the event that debt financing is sought.
- 3. Potential grant and other funding sources:** The County has expended considerable effort to assist WRA in identifying funding sources for the Projects. Numerous conference calls and meetings have been held involving Supervisors Salinas and Potter (Board Water Ad Hoc Committee), Nossaman LLP (Strategic Grant Services), WRA staff, CAO staff, Secretary Laird, Assemblymember Alejo

and representatives of the Leadership Group. To date, no assured source of grant funding has been identified. It is possible that grant funding will be available at a future date, however in some cases the regulations for certain grant funds being competitively sought will be awarded. It is recommended as part of this report that WRA staff be directed to pursue all available grant funding and other potential financing options, such as public-private partnerships and report the status to the Board of Supervisors quarterly.

4. **White bass transfer:** The California Fish and Game Code prohibit transfer of white bass due to the extremely predatory nature of the white bass and potential for negative impacts on the fish species. Following an initial meeting with Secretary John Laird of the California Resources Agency, two productive meetings have been held with California Department of Fish and Wildlife (“CDFW”); Supervisor Potter, Supervisor Salinas, WRA staff, CAO staff and representatives from Nossaman LLP. Potential resolution of the white bass transfer issue will involve:
  - a. Determination of “substantial compliance” with Fish and Game Code requirements.
  - b. Project design modifications that may include deep water intake.
  - c. Written documentation of system-wide benefits of the project including flood control, drought reserve, sea water intrusion mitigation and environmental enhancements.

It is staff's understanding that WRA is working to provide the above documentation to CDFW. CAO staff is optimistic that, based on progress to-date, the white bass issue can be successfully resolved. However, final resolution of the white bass transfer issue has not yet been achieved. This is viewed as a critical path issue that must be resolved for the project to proceed. The cost of the white bass solution is included in the \$68M projected cost of the Projects

OTHER AGENCY INVOLVEMENT:

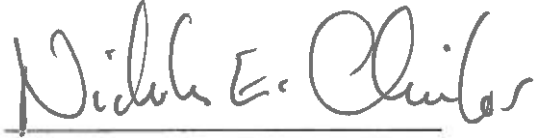
Staff involved in the funding and reimbursement agreement process include County Counsel, Auditor Controller, Water Resources Agency and CAO-Intergovernmental & Legislative Affairs. This item was brought before the Budget Committee on November 12, 2015. Due to late submission of this Board Report, the CAO Budget and Analysis Division was not provided adequate time to fully review for potential fiscal, organizational, policy, or other implications to the County of Monterey .

FINANCING:

If approved, funds for the \$971,000 necessary for the Third and Final Funding and Reimbursement Agreement will be sourced from General Fund Operational Contingencies for FY 2015-16. General Fund Operational Contingencies are sourced with one-time funding. Any use of General Fund Contingencies may require reductions in other programs to continue the program. FY2015-16 budgeted General Fund Contingencies are \$5,399,351. Thus far, transfers in the amount of \$4,316,535 from the General Fund Contingencies have been approved by the Board in FY 2015-16. With this requested action and the Department of Social Services Report

for Extended Homeless Services approved, the remaining General Fund Operational Contingencies would be \$35,751.

Approved by:

A handwritten signature in black ink that reads "Nicholas E. Chiulos". The signature is written in a cursive style and is positioned above a horizontal line.

Nicholas E. Chiulos

Assistant County Administrative Officer

Attachment: Third Reimbursement and Funding Agreement