



Legislation Details (With Board Report)

File #: RES 16-922 **Name:** Amd to Section 7.02 MRWPCA JPA
Type: BoS Resolution **Status:** Passed
File created: 7/28/2016 **In control:** Board of Supervisors
On agenda: 9/13/2016 **Final action:** 9/13/2016

Title:
a. Adopt a Resolution consenting to an amendment of paragraph 7.02 of the Monterey Regional Water Pollution Control Agency (MRWPCA) Joint Exercise of Powers Agreement (JEPA) to support a borrowing agreement with the State Water Resources Control Board; and
b. Authorize the Chair to execute the First Amendment to the Monterey Regional Water Pollution Control Agency (MRWPCA) Joint Exercise of Powers Agreement (JEPA).

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Attachment A. JEPA for the MWRPCA, 3. Attachment B. Prpsd Frst Amnd, JEPA for MRWPCA, 4. Attachment C. Red Lnd copy of Sctn 7.02 MRWPCA JPA, 5. Attachment D. Board Resolution Consenting to Amendment, 6. Completed Board Order & Resolution

Date	Ver.	Action By	Action	Result
9/13/2016	1	Board of Supervisors	adopted	Pass

a. Adopt a Resolution consenting to an amendment of paragraph 7.02 of the Monterey Regional Water Pollution Control Agency (MRWPCA) Joint Exercise of Powers Agreement (JEPA) to support a borrowing agreement with the State Water Resources Control Board; and
b. Authorize the Chair to execute the First Amendment to the Monterey Regional Water Pollution Control Agency (MRWPCA) Joint Exercise of Powers Agreement (JEPA).

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Adopt a resolution consenting to an amendment of paragraph 7.02 of the Monterey Regional Water Pollution Control Agency (MRWPCA) Joint Exercise of Powers Agreement (JEPA) to support a borrowing agreement with the State Water Resources Control Board; and
- b. Authorize the Chair to execute the First Amendment to the Monterey Regional Water Pollution Control Agency (MRWPCA) Joint Exercise of Powers Agreement (JEPA).

SUMMARY/DISCUSSION:

The Monterey Regional Water Pollution Control Agency is a Joint Powers Agency (hereafter, “MRWPCA” or “Agency.”) The Agency is the legal successor agency to the Monterey Peninsula Water Pollution Control Agency (MPWPCA) which was formed in February 1972 by the Cities of Monterey, Pacific Grove and the Seaside County Sanitation District. In April 1975, the City of Salinas and the County of Monterey became members of the MPWPCA. In February 1976, the three members of the Seaside County Sanitation District, namely, the Cities of Del Rey Oaks, Sand City and the City of Seaside, became individual members of the Agency.

In 1977, the Monterey Regional County Sanitation District (MRCSD) was formed for the purpose stated below in Section 1.03 of the Monterey Regional Water Pollution Control Agency (MRWPCA) Joint Exercise of

Powers Agreement (JEPA - Attachment A):

1.03 Formation of Operating District - MRCSD. In early 1977 the cities of Monterey, Pacific Grove, Seaside, Del Rey Oaks, and Sand City and the County of Monterey acted to create the Monterey Regional County Sanitation District, hereinafter referred to as "MRCSD." The MRCSD was formed for the purpose of operating the sewage collection, treatment, and disposal services for the cities within the district, as part of Stage 1 on the aforesaid regional project, and to become the eventual successor entity to the MPWPCA as the owner-operator of the regional facilities constructed by the MPWPCA. During 1978 the City of Salinas, the Castroville County Sanitation District and the Moss Landing County Sanitation District all acted to join and annex to the MRCSD.

It was the intent and desire of the parties, through the present JEPA dated on or about June 27, 1979 (Attachment A) to codify prior agreements and for the Agency to supersede the MPWPCA in all manner and respects as set forth in Section 1.04 of the JEPA below:

1.04 Codify Prior Agreements; Supersede MPWPCA. It is the intent and desire of the parties, by this present Agreement, to clarify, up-date and codify the Joint Powers Agreement for the MPWPCA, which has been amended four times and which contains language and provisions which are no longer operable or applicable to the present circumstances. It is the intention of the MPWPCA and its member entities, all of which are parties to this Agreement, that the Agency created by this Agreement, the Monterey Regional Water Pollution Control Agency, shall supersede and in all manner and respects be the legal successor in interest of the MPWPCA, and as such successor, be legally entitled to all of the rights, entitlements and assets of, and subject to all of the duties and obligations of, the MPWPCA.

The Agency is in the process of working with the State to facilitate a loan for the Pure Water Monterey Project. As a condition of the loan, the State is requiring the Agency to amend Section 7.02 of the existing JEPA.

Section 7.02 of the existing JEPA states:

7.02 Termination. This Agreement may be terminated and the Agency dissolved by a two-thirds (2/3) vote of the Board of Directors, ratified by two-thirds (2/3) of the member agencies; provided, however, that there shall be no termination and dissolution until any and all revenue bond debt incurred by the Agency for the construction or acquisition of its regional sewerage facilities has been fully amortized and retired or such debt is refinanced by the MRCSD or other successor entity.

The State is requesting that a similar clause be inserted to encompass any financing provided by the State Water Resources Control Board (SWRCB). The Agency has requested that all member entities adopt a resolution consenting to an amendment of paragraph 7.02 of JEPA to support a borrowing agreement with the State Water Resources Control Board.

The Agency has requested revision of Section 7.02 Termination of the JEPA as set forth below:

Agreement to First Amendment

1. All existing eligible public agencies of MRWPCA, having consented to the amendment of Paragraph 7.02 described hereinabove, hereby agree that said Paragraph of the JPA Agreement be amended to read in full as follows:

7.02 Termination. This Agreement may be terminated and the Agency dissolved by a two-thirds (2/3) vote of the Board of Directors, ratified by two-thirds (2/3) of the member agencies; provided, however, that there shall be no termination and dissolution unless the following two conditions are satisfied:

(1) any and all revenue bond debt incurred by the Agency for the construction or acquisition of its regional sewerage facilities has been fully amortized and retired or such debt is refinanced by the MRCSD or other successor entity, and (2) any and all debt incurred by the Agency in connection with any financing provided by the State Water Resources Control Board has been fully amortized and retired or such debt is refinanced by the MRCSD or other successor entity.

A redlined version of the proposed Amendment to Section 7.02 is included as Attachment C. This proposed action does not modify any substantive terms of the Agreement, other than assuring that both revenue bonds and SWRCB loans will be paid or refinanced prior to the termination of the JEPA and dissolution of the Agency.

On July 25, 2016, the MRWCPA Board unanimously approved a resolution to amend Paragraph 7.02 of the JEPA and requested that all MRWPCA member entities consent to the amendment. As a member entity, County of Monterey Board of Supervisors approval is needed for the amendment to become effective and for MRWPCA to be able to proceed with the loan process.

The MRCSD mentioned in Section 1.03 and Section 7.02 of the JEPA is the Monterey Regional County Sanitation District, the companion district to the MRWPCA which establishes the boundaries of the MRWPCA service area, and the entity which is referenced in the JEPA Agreement as the potential successor entity should the MRWPCA ever be dissolved.

OTHER AGENCY INVOLVEMENT:

The Agency has requested that all member agencies adopt a resolution to amend Section 7.02 and execute the proposed First Amendment to the JEPA. The proposed First Amendment to the JEPA states that eligible public agencies of the Monterey Regional Water Pollution Control Agency (“MRWPCA”) as of the date of the proposed First Amendment are:

The City of Del Rey Oaks
The City of Monterey
The City of Pacific Grove
The City of Salinas
The City of Sand City
The City of Seaside
The County of Monterey
The Castroville Community Services District
The Boronda County Sanitation District
The Marina Coast Water District.

So far, the City of Monterey, the City of Sand City, and the Marina Coast Water District have adopted a

Resolution to amend Section 7.02 and have executed the proposed First Amendment to the JEPA.

FINANCING:

There is no fiscal impact associated with this item. In accordance with Section 4.03 of the JEPA, “No member shall be liable for any indebtedness of the Agency except that which is expressly consented to by its governing body. All persons dealing with the Agency shall be hereby notified that no member shall be liable for the debts of the Agency.”

Prepared by: Lynette Redman, Management Analyst III
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Approved by: Carl P. Holm, AICP, RMA Director
Shawne Ellerbee, RMA Deputy Director of Administrative Services

The following attachments are on file with the Clerk of the Board:

- A. Joint Exercise of Powers Agreement (JEPA) for the MRWPCA
- B. First Amendment to the JEPA for MRWPCA
- C. Proposed Amendment/Redlined Version of Section 7.02 of the MRWPCA JPA
- D. Draft Board Resolution Consenting to the Amendment for MRWPA