



## Board Report

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**File #:** WRAG 18-189, **Version:** 1

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Approve the Policy Relating to the Reconstruction of Structures Damaged by the 2016 Chimney Fire (“Reconstruction Policy”), which will grant permission to allow reconstruction in the Monterey County Water Resources Agency’s floodage easement at Nacimiento Reservoir, and authorize the General Manager to execute the required agreements.

### RECOMMENDATION:

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

- a. Approve the Policy Relating to the Reconstruction of Structures Damaged by the 2016 Chimney Fire, which will grant permission to allow reconstruction in the Monterey County Water Resources Agency’s Floodage Easement at Nacimiento Reservoir; and
- b. Authorize the General Manager to execute the required agreements.

### SUMMARY/DISCUSSION:

The Monterey County Water Resources Agency (“MCWRA”) has received requests for permission to allow the continued and previously unauthorized use of MCWRA’s floodage easement (“Easement”) that surrounds Nacimiento Reservoir at the Cal Shasta Club. San Luis Obispo County officials and homeowners whose homes were destroyed, have requested that MCWRA allow existing structures previously located within the Easement to be rebuilt due to recent fire damages. The structures that were destroyed in the Chimney Fire were originally built without the permission of the MCWRA Board of Supervisors.

In August 2016, 28 privately owned structures were destroyed at the Cal-Shasta Club because of the Chimney Fire. Eight of these structures were located within the Easement at or below 825 (NGVD29). Owners of these structures have requested that MCWRA grant permission to replace these fire-damaged structures. MCWRA staff made an initial conclusion that these structures should not be reconstructed in the Easement area. However, MCWRA and Monterey County Counsel have been working with Cal Shasta Club representatives and their attorney, and San Luis Obispo County Counsel to prepare the Reconstruction Policy to allow for the reconstruction of these eight homes.

In March 2017, MCWRA staff presented a draft Reconstruction Policy to the Board of Directors, as the eight homeowners were essentially seeking disaster relief which would allow in this one instance the ability of the structures within the Easement area to be reconstructed. The Board of Directors did not approve the Policy, and rather directed staff to continue to work on issues raised by the Directors and the homeowners.

In August 2017, MCWRA staff met with California Department of Water Resources Division of Safety of Dams (“DSOD”) and Federal Energy Regulatory Commission (“FERC”) to confer on the project regulations for operations of the Nacimiento Reservoir. This meeting was a result of the recent events at the Oroville Dam. At the meeting and in meetings thereafter, DSOD and FERC staff did not state opposition to MCWRA’s position to allow reconstruction of the structures. MCWRA has submitted letters to DSOD and FERC to ensure that encroachment into the Easement would not represent a violation of the operations policies and/or approvals.

On April 17, 2018, the San Luis Obispo Board of Supervisors authorized processing an amendment of its General Plan and County Code to allow reconstruction of homes within the floodage easement that were destroyed subject to the approval of MCWRA. The amendments went to the San Luis Obispo Planning Commission on September 27, 2018. The San Luis Obispo Board of Supervisors will hear the action in October/November 2018.

The current draft of the Reconstruction Policy has been agreed to by San Luis Obispo County Counsel, Cal-Shasta, and the homeowners. The Policy contemplates giving authority to the MCWRA General Manager to enter into encroachment agreements (“Agreements”) with Cal-Shasta and the eight homeowners. The Policy will require the Agreements to contain numerous provisions. Among other things, Cal Shasta and the homeowners must agree to the following: acknowledge the Easement; build within the same footprint as the destroyed structure; waive and release MCWRA and Monterey County for MCWRA’s reasonable exercise of any of its rights under the Easement; and indemnify MCWRA, Monterey County and San Luis Obispo County. As the homes will be rebuilt in San Luis Obispo County, the homeowners will need to obtain all necessary building permits from San Luis Obispo County after the Agreements are recorded.

OTHER AGENCY INVOLVEMENT:

The MCWRA Board of Directors recommended approval of the Reconstruction Policy on September 17, 2018. Counsel County has reviewed the Reconstruction Policy as to form.

FINANCING:

None

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Approved by: \_\_\_\_\_  
David E. Chardavoyne, General Manager, (831) 766-4860

Attachment:

1. Draft Policy Relating to the Reconstruction of Structures Damaged in the 2016 Chimney Fire
2. Summary of the Floodage Easement and Recorded Documents