

**COUNTY OF SONOMA  
AGENDA ITEM  
SUMMARY REPORT**

**Clerk of the Board Use Only**  
**Meeting Date**                      **Held Until**  
 \_\_\_\_\_  
**Agenda Item No:**                      **Agenda Item No:**  
 \_\_\_\_\_

**Department:**  
Occidental County Sanitation District

( ) 4/5 Vote Required

**Contact:** Dennis Daly      **Phone:** (707) 547-1984      **Board Date:** 04-21-09

**Deadline for Board Action:**

**AGENDA SHORT TITLE:**  
Occidental County Sanitation District Construction Grant Agreement

**REQUESTED BOARD ACTION(S):**  
Concurrent Resolution authorizing entry into State Water Resources Control Board Proposition 50 Small Community Wastewater Grant Agreement for use of Proposition 50 Grant Funds for Occidental Collection System Replacement Project No. SCG-802-030.

**CURRENT FISCAL YEAR FINANCIAL IMPACT**

<u>EXPENDITURES</u>		<u>ADD'L FUNDS REQUIRING BOARD APPROVAL</u>	
<b>Estimated Cost</b>	\$ -0-	<b>Contingencies</b>	\$
		(Fund Name: )	
<b>Amount Budgeted</b>	\$ -0-	<b>Unanticipated Revenue</b>	\$
		(Source: )	
<b>Other Avail Approp (Explain below)</b>	\$ _____	<b>Other Transfer(s)</b>	\$
		(Source: )	
<b>Additional Requested:</b>	\$ -0-	<b>Add'l Funds Requested:</b>	\$ -0-

**Explanation (if required):**  
No funding is currently being requested for appropriation for the proposed project identified in the Capital Improvements Plan. The maximum amount payable to the Occidental County Sanitation District Collection System Replacement Project under the Construction Grant Agreement will not exceed \$1,718,783.

**Prior Board Action(s):**  
 12/09/08 Resolution No. 08-0991 authorizing execution of the Proposition 50 construction grant agreement.  
 06/03/08 Resolution No. 08-0479 accepting completed work for the Occidental County Sanitation District Collection System Replacement Project.  
 06/19/07 Resolution No. 07-0545 letting the construction contract for the project.

**Alternatives - Results of Non-Approval:**  
Reimbursement for up to \$1,718,783 in construction funding would be lost.

**Background:** Draft Grant Agreement, Three Resolutions on file with the Clerk.

This agenda item presents for Board consideration a Concurrent Resolution of the Occidental County Sanitation District (District) and Sonoma County Water Agency (Agency) regarding use of the Proposition 50 Grant Funds for the Occidental Collection System Replacement Project No. SCG-802-030.

The chronology of the construction project is as follows:

1. On June 11, 2007, the State Water Resources Control Board (SWRCB) issued a Facilities Plan Approval.
2. On June 19, 2007, the Board authorized the District to execute a construction contract for the project.
3. On July 2, 2007, SWRCB issued a Preliminary Funding Commitment.
4. The Agency's General Fund covered construction costs pending grant reimbursement.
5. On June 3, 2008, the Board signed Resolution No. 08-0479 authorizing the General Manager/Chief Engineer of the Agency to file a Notice of Completion for the construction project on behalf of the District.
6. On June 18, 2008, SWRCB issued an Approval to Award \$1,718,783 for the construction project.
7. On September 17, 2008, SWRCB informed the District that the Board of Directors needed to pass a Resolution authorizing execution of the grant agreement.
8. On December 9, 2008, the Board of Directors approved Resolution 08-0991 authorizing execution of the grant agreement for the construction project.
9. On December 22, 2008, SWRCB issued a notice indicating that, due to the state's budget crisis, reimbursement of construction funds was on hold until further notice.
10. On February 3, 2009, SWRCB informed the District that Resolution 08-0991 was unacceptable as approved since it needed to more clearly authorize both the Agency and District to execute the revised grant agreement with an indemnity clause included (see explanation below).

The SWRCB has informed the Agency/District that it requires inclusion of an additional indemnification clause in the grant reimbursement agreement, with the Agency acting as Indemnitor, and focusing on possible property interest related claims. The clause applies to a claim by a party asserting an interest on property where the Project has been built which results in legal costs to the SWRCB or reduces the value or usefulness of the Project.

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**Attachments:** Resolution (R1)

**On File With Clerk:**

Draft Grant Agreement, Resolution Nos. 08-0991, 08-0479, and 07-0545.

**CLERK OF THE BOARD USE ONLY**

**Board Action (If other than "Requested")**

**Vote:**

**Background (continued):**

The indemnity clause states:

“In the event of the filing of any claim by any party asserting an interest in real property upon which the Project is located that would affect the value or usefulness of the Project, as determined by the State Water Board, the Grantee or Indemnitor shall:

- a. Take all actions necessary, at their sole cost and expense, to resolve such claims in a manner that will ensure the full, continued operation and usefulness of the Project;
- b. Indemnify and defend the State Water Board from and against such claim; and
- c. Reimburse the State Water Board the full amount of the construction grant funding provided pursuant to this Agreement within 30 days following a written demand by the State Water Board, should the claim result in a compromise or judgment that has a material adverse effect on the value or usefulness of the Project.”

The Project has been built within publicly maintained roadways used by the public which have likely come into public ownership under operation of law. Therefore, Agency’s staff believe, with County Counsel concurrence, that the likelihood of a property claim being successful and resulting in loss of Project value or usefulness is remote.

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