

County Of Sonoma Agenda Item Summary Report

Clerk of the Board Use Only
Meeting Date **Held Until**
 / / / /
Agenda Item No: **Agenda Item No:**
 _____ _____

Department: Sonoma County Water Agency

4/5 Vote Not Required

Contact:
David Manning

Phone:
(707) 547-1988

Board Date:
9/22/2009

Deadline for Board Action:

AGENDA SHORT TITLE:

Department of Fish and Game Consistency Determination for Biological Opinion.

REQUESTED BOARD ACTION:

1. Authorize the General Manager/Chief Engineer to sign a Memorandum of Agreement between Sonoma County Water Agency and California Department of Fish and Game regarding implementation of financial assurances necessary to obtain a consistency determination under the California Endangered Species Act.
2. Authorize the General Manager/Chief Engineer to undertake actions necessary to procure a standby Letter of Credit in the amount of \$7,770,280 as described in the Memorandum of Agreement, including execution of an agreement with North Coast Bank for such a Letter of Credit in substantially the form presented to this Board, following review and approval by County Counsel as to form.
3. Authorize the General Manager/Chief Engineer to purchase a certificate of deposit equal to the amount of the Letter of Credit from North Coast Bank using the retained earnings in the Warm Springs Dam Special Revenue Fund.
4. Authorize the General Manager/Chief Engineer to submit a written request to California Department of Fish and Game for a Determination of Consistency with the California Endangered Species Act for listed coho salmon.
5. Resolution authorizing budgetary adjustments to the 2009/2010 final budget for the Warm Springs Dam Special Revenue Fund in the amount of \$58,750.

CURRENT FISCAL YEAR FINANCIAL IMPACT

EXPENDITURES:

ADDITIONAL FUNDS REQUIRING BOARD APPROVAL:

Estimated Cost	\$58,750	Contingencies	\$0
		(Fund Name:)	
Amount Budgeted	\$0	Unanticipated Revenue	
		(Source:)	
Other Available Appropriations	\$0	Other Transfers	\$58,750
(Explain Below)		(Source: Fund Balance)	
Additional Requested	\$58,750	Additional Funds Requested	\$58,750

Explanation (if required):

Additional appropriations are required to process these expenses. Fund balance from the Warm Springs Dam Special Revenue Fund (673806) will be appropriated with Board approval.

Prior Board Action:

08/16/97: Authorize the General Manager/Chief Engineer to execute a memorandum of understanding among the Agency, United States Army Corps of Engineers, and National Marine Fisheries Service to initiate a Federal Endangered Species Act Section 7 Consultation for the Russian River Project.

Alternatives – Results of Non-Approval:

Failure to sign a memorandum of agreement with California Department of Fish and Game and procure a Letter of Credit will result in violation of the California Endangered Species Act and a determination by Fish and Game of a take of listed coho salmon.

Background:

On September 24, 2008, the National Marine Fisheries Service (NMFS) issued its biological opinion (BO) and Incidental Take Statement (I.T.S.) under the federal Endangered Species Act (ESA) regarding Sonoma County Water Agency’s (Agency) operation and maintenance activities in the Russian River watershed. The I.T.S. covers three species of fish listed under ESA, Central California Coast steelhead, Central California Coast coho salmon, and California Coastal Chinook salmon.

One of these species, coho salmon, is also listed under the California Endangered Species Act (CESA). Under CESA, an applicant that has obtained a federal I.T.S. may request a “Consistency Determination” from the California Department of Fish and Game (CDFG). If CDFG determines that the federal I.T.S. is consistent with the CESA, then the applicant also obtains incidental take authorization under the CESA with respect to state-listed species.

An applicant for a Consistency Determination must ensure adequate funding to carry out the terms of the I.T.S. Agency staff and County Counsel have worked with CDFG to develop a Memorandum of Agreement (MOA) between the Agency and CDFG which will provide a mechanism to ensure such adequate funding. Pursuant to the MOA, CDFG will be the beneficiary of a Letter of Credit that the CDFG can draw upon if the Agency fails to carry out activities that specifically relate to coho salmon as identified in the BO. Under the BO and the MOA, the Letter of Credit is to cover Stage 1 of coho-related activities, which covers the years 2009-2013. The BO and MOA contemplate that additional Letters of Credit will be required for Stage 2 (years 2014-2016) and Stage 3 (years 2017-2022) activities.

The amount of the Letter of Credit is \$7,770,280, which is the estimated cost of the Phase 1 coho-related activities. Under the MOA, as the Agency completes each separate activity, the principal balance of the Letter of Credit will be reduced. The Letter of Credit will expire at the end of 2014. Under the MOA, CDFG’s ability to draw on the Letter of Credit is subject to a number of conditions. Most importantly, CDFG must give the Agency written notice of any alleged default by the Agency in its BO obligations, as well as an opportunity to cure any such default. If CDFG draws on the Letter of Credit, it must use proceeds in order to complete coho-related work under the BO.

Agency staff distributed a Request For Proposal (RFP) to both local and national banks for the Letter of Credit. Four banks responded to the RFP and the proposal most advantageous to the Agency in terms of overall cost and acceptable security for the deposit was from North Coast Bank. Total fees for issuing the Letter of Credit will be \$58,750 for the first year and \$500 per year thereafter. The Agency will secure the Letter of Credit by purchasing a certificate of deposit from North Coast Bank in the amount of the Letter of Credit. This will be done through a transfer of retained fund balance earnings from Warm Springs Dam Special Revenue Fund. The funds held by the County Treasury will be replaced on the balance sheet with the certificate of deposit at North Coast Bank. This will not be an expense to the fund; it will exchange one liquid asset for another asset which will earn 1.5% interest.

Under the CESA, a request for a Consistency Determination is initiated by submitting a written request to the Director of CDFG, along with a copy of the federal BO and I.T.S. This item requests that the Board authorize the Agency’s General Manager/Chief Engineer to formally request a Consistency Determination from CDFG. Once received by CDFG, CDFG has 30 days to process the request. When issued by CDFG, the Consistency Determination will provide the Agency with incidental take coverage under CESA for the same Russian River activities for which it already has take coverage under the federal ESA pursuant to the BO.

Attachments:

Resolution (R1)

On File With Clerk:

1) Memorandum of Agreement; 2) Standby Letter of Credit; 3) Draft Agreement with North Coast Bank.

CLERK OF THE BOARD USE ONLY

Board Action (If other than “Requested”)

Vote: