

AGENDA ITEM NO. 7

MINUTES
June 6, 2016



MEETING MINUTES

1. CALL TO ORDER

The meeting of the Western Riverside County Regional Conservation Authority was called to order by Executive Director Charles Landry at 12:32 p.m. on Monday, June 6, 2016, in the Board Room of the Riverside County Administrative Center, 4080 Lemon Street, Riverside, California, 92501.

Charles Landry announced that RCA's Chairperson and Vice Chairperson were both absent and that the Board of Directors needed to elect a Chairperson Pro Tem. He then turned the meeting over legal counsel, Steven DeBaun.

Steven DeBaun confirmed that the first order of business would be for the Board of Directors to elect a Chairperson Pro Tem to lead the meeting.

M/S/C (INGRAM/MELENDREZ) to elect Board Member Ben Benoit as Chairperson Pro Tem.

19 Ayes, 0 Nays, 0 Abstain

City of Corona/Haley voted Aye on this item, yet malfunction with electronic voting system occurred so 18 Ayes votes were tallied by electronic system yet 19 Ayes occurred.

Board Member Lorimore arrived after the vote was taken.

2. PLEDGE OF ALLEGIANCE

Board Member Ingram led the RCA Board Members and meeting attendees in a flag salute.

3. ROLL CALL - Taken by Rose Esparza, RCA Administrative Manager.

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Board Members Present

Board Members Absent

<p>George Moyer, <i>City of Banning</i> Brenda Knight, <i>City of Beaumont</i> Jeffrey Hewitt, <i>City of Calimesa</i> Tim Brown, <i>City of Canyon Lake</i> Dick Haley, <i>City of Corona (Alt. **)</i> Clint Lorimore, <i>City of Eastvale*</i> Linda Krupa, <i>City of Hemet</i> Verne Lauritzen, <i>City of Jurupa Valley</i> Natasha Johnson, <i>City of Lake Elsinore</i> Matt Liesemeyer, <i>City of Menifee</i> George Price, <i>City of Moreno Valley (Alt. **)</i> Jonathan Ingram, <i>City of Murrieta</i> Kevin Bash, <i>City of Norco</i> David Starr Rabb, <i>City of Perris</i> Andy Melendrez, <i>City of Riverside</i> Crystal Ruiz, <i>City of San Jacinto</i> Maryann Edwards, <i>City of Temecula</i> Ben Benoit, <i>City of Wildomar</i> Kevin Jeffries, <i>Riverside County District I</i> Ella Zanowic, <i>Riverside County District V (Alt. **)</i></p>	<p>John Tavaglione, <i>Riverside County District II</i> Chuck Washington, <i>Riverside County District III</i> John Benoit, <i>Riverside County District IV</i></p>
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*Arrived after roll call. **Alt. – Alternate Board Member

4. PUBLIC COMMENTS

Chairperson Pro Tem Benoit called for public comments on items not listed on the agenda. There were no public comments.

5. BOARD MEMBER ANNOUNCEMENTS

Chairperson Pro Tem Benoit called for any Board Member announcements. There were no Board member announcements.

6. ADDITIONS/REVISIONS

Chairperson Pro Tem Benoit asked if there were any additions/revisions for the record.

Rose Esparza, Administrative Manager, stated that because of the appointment of Chairperson Pro Tem Ben Benoit from the City of Wildomar, let the video/electronic vote reflect that the City of Wildomar is voting in the Chairperson's seat number 18 and that seat number 26 for the City of Wildomar is reflected as absent, even though the representative is in attendance. This will aid in having an accurate count of the number votes for each Member Agency in attendance today.

She also indicated that there were no other additions or revisions.

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7. APPROVAL OF MINUTES – May 2, 2016

M/S/C (BASH/EDWARDS) to approve the minutes of the May 2, 2016 meeting of the RCA Board of Directors.

Ayes 18, Nays 0, Abstain 2 (Haley/Zanowic)

City of Corona/Haley Abstained on this item, yet malfunction with electronic voting system occurred so 1 Abstention vote was tallied by electronic system, yet 2 Abstentions occurred.

8. CONSENT CALENDAR

M/S/C (INGRAM/MOYER) to approve the Consent Calendar Agenda Item Nos. 8.1, 8.2, 8.3 and 8.4.

Ayes 20, Nays 0, Abstain 0

City of Corona/Haley voted Aye on this item, yet malfunction with electronic voting system occurred so 19 Ayes votes were tallied by electronic system, yet 20 Ayes occurred.

8.1 WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN (MSHCP) LOCAL DEVELOPMENT MITIGATION FEE (LDMF) COLLECTION AND CIVIC/INFRASTRUCTURE CONTRIBUTION REPORT FOR APRIL 2016

Overview

This item is for the RCA Board of Directors to receive and file the Western Riverside County MSHCP LDMF Collection and Civic/Infrastructure Contribution Report for April 2016.

8.2 FISCAL YEAR 2016 THIRD QUARTER FINANCIAL REPORT

Overview

This item is for the RCA Board of Directors to Receive and file the Fiscal Year 2016 Third Quarter Financial Report.

8.3 FISCAL YEAR 2016 THIRD QUARTER CONSULTANT REPORTS

Overview

This item is for the RCA Board of Directors to Receive and file the Fiscal Year 2016 Third Quarter Consultant Reports.

8.4 RESOLUTION NO. 2016-010, RESOLUTION OF THE BOARD OF DIRECTORS OF THE WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY ADOPTING A FUND BALANCE POLICY

Overview

This item is for the RCA Board of Directors to adopt Resolution No. 2016-010, *Resolution of the Board of Directors of the Western Riverside County Regional Conservation Authority Adopting a Fund Balance Policy.*

9. RESOLUTION NO. 2016-011, RESOLUTION OF THE BOARD OF DIRECTORS OF THE WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY IMPLEMENTING A POLICY REQUIRING A TOLLING/WAIVER AGREEMENT BY MEMBER AGENCIES DURING THE RESOLUTION OF CERTAIN FEE ISSUES

Overview

This item is for the RCA Board of Directors to adopt Resolution No. 2016-011, *Resolution of the Board of Directors of the Western Riverside County Regional Conservation Authority Implementing a Policy Requiring a Tolling/Waiver Agreement by Member Agencies During the Resolution of Certain Fee Issues.*

Steven DeBaun, Legal Counsel, presented this item. He reported that RCA audits the Member Agencies' fee collections on an annual basis. When fee discrepancies arise, the parties work to resolve disputes. These discussions can be lengthy and complex involving multiple parties. The passage of time during these negotiations can trigger statute of limitation concerns for RCA. At the Executive Committee's direction, legal counsel prepared a draft policy, which requires Member Agencies with fee disputes to execute tolling agreements during the time fee disputes are being negotiated. Under the policy, Member Agencies will be required to enter into a Tolling Agreement within 90 days of receiving notice of fee discrepancies from the RCA. The Tolling Agreement will freeze the statute of limitations and allow the parties to negotiate without the pressure of the passage of time and triggering

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statute of limitation concerns. Under the policy, if a Member Agency fails to sign a Tolling Agreement within 90 days, the resolution provides that the RCA Board of Directors may withdraw Measure A certification from the Member Agency. For existing fee disputes, the Executive Committee has suggested that legal counsel be directed to negotiate Tolling Agreements with those Member Agencies that have outstanding fee disputes that arose after July 1, 2013. Legal counsel shall be required to report back to the Executive Committee on the status of such Tolling Agreements within three months.

Board Member Brown asked legal counsel to define a Tolling Agreement. Steve DeBaun answered that a Tolling Agreement freezes the statute of limitations. Essentially, it is an agreement wherein the parties choose to agree that as of the date of the Tolling Agreement, or whatever other date the parties choose, any statute of limitation concerns would be construed as of that date. The reason for entering into such agreement is that there are statutes of limitations that can prevent agencies or any party from pursuing a lawsuit against another party for nonpayment of fees or any other sort of nonpayment. By allowing the Tolling Agreement to be signed, the parties are allowed to negotiate without the statute of limitation running. Otherwise, without a Tolling Agreement, the parties are often forced to forgo claims or, in worst cases, file a lawsuit. Tolling Agreements are an attempt to avoid the filing of lawsuits or other remedies that might be available.

Board Member Ingram stated that he previously expressed his concerns to Steve DeBaun. If the policy is not retroactive, he does not have an issue with requiring a Tolling Agreement that may prevent a lawsuit and allow the opportunity to negotiate. He asked how legal counsel intends to apply this policy to Member Agencies already in the queue that may have an issue.

Steve DeBaun responded that the resolution and the policy are forward-looking only. It only references future disputes. The direction contained in the staff report is that the Board of Directors will provide direction to legal counsel to negotiate with those Member Agencies that have existing fee disputes that were notified on or after July 1, 2013. Legal counsel will do its best to negotiate a Tolling Agreement along the lines of what is attached; however, legal counsel will then report back to the Executive Committee within 90 days to provide the status of those negotiations, and then the Board of Directors would provide further direction.

Board Member Ingram said that he did not believe anyone on the RCA Board would be willing to subject their city to sign a Tolling Agreement from 2013 extending or taking away their rights. He asked legal counsel to confirm his understanding that this policy would only apply from this point forward once the Board either accepts or rejects the policy. Steve DeBaun stated that the policy itself is only from this point forward.

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Board Member Ingram asked if RCA is going to try to retroactively enforce this new policy. Steve DeBaun answered that it would be up to the Executive Committee and the Board to decide what to do with fees that are in dispute prior to the date of the policy. The Board could decide to withdraw Measure A certification for outstanding fees that are currently owed. That option is available, or the Board could direct legal counsel to file suit against that agency or continue negotiations. The actual resolution itself does not deal with existing fee disputes, only future fee disputes.

Board Member Jeffries stated that it's almost like a binding arbitration, but not in legal terms. One must go through this process. In that sense he agrees with the policy. He reiterated the point that Board Member Ingram brought up about the implication that there is some ability to apply the policy retroactively. Board Member Jeffries stated he did not understand how one gets past the philosophical issue of RCA being created by the parent agencies, which are all the cities and the county. In this particular case, it's like the child telling the parent this is what you are going to do. The RCA only has the powers that are vested in it from the Member Agencies to exercise, yet RCA is going to turn around and use the Member Agencies' own power to tell the Member Agencies how to conduct their business. The Member Agencies should be allowed to make decisions and do whatever it is that they believe is best for the City and their own constituents, yet RCA is going to tell Member Agencies they have to sign away their rights to contest and fight this. He stated that philosophically, it's hard to agree with, but he appreciated the point of trying to avoid litigation. However, the thought of RCA telling its Member Agencies how they are going to conduct themselves in closed session is troubling. He asked legal counsel to walk him through this to ease his concerns.

Steve DeBaun explained that RCA has and exercises whatever powers the Member Agencies provide. As an example, if the Member Agencies say that RCA is no longer going to collect fees, there may be issues with the implementation agreement and the MSHCP, but the RCA as a body would no longer be responsible for collecting fees. He was not suggesting that, but used this analogy as an example that RCA does what it's directed to do by the Board of Directors. In this case, the Board has empowered the RCA to ensure that fees are collected, and RCA needs to create a level playing field for all Member Agencies. When some Member Agencies are not collecting the appropriate fees and others are, a level playing field is necessary. At this point, staff's belief is that the direction from the Board of Directors is to take all reasonable steps to collect fees for the good of the whole.

Board Member Jeffries said that he understood, but does not necessarily agree that one size fits all in this particular case because a few cities on RCA have been constantly brought up over the last three years going after them for certain exempt developments that were approved back in 1990's or early 2000's. This will make it

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difficult for anyone that has a dispute. He asked counsel to explain what the real consequences are of withdrawing Measure A certification and what that means when an impasse is reached and the Board of Directors or staff decides to withdraw that certification arbitrarily.

Steve DeBaun responded that under Measure A, there is a component (40% or so) of Measure A revenues that are returned back to the local jurisdiction as local streets and road funds. Each agency receives its share of those local streets and roads funds. It depends upon what the population and the generation of sales within the particular agency in question would be. If an agency is no longer certified as participating in the MSHCP program or in the TUMF program, which is the same provision of Measure A, that agency will no longer receive its Measure A local streets and roads money. That could vary from a couple hundred thousand to several million a year.

Board Member Jeffries asked who makes the decision to suspend or withdraw that certification under this provision. Steve DeBaun answered that the RCA Board of Directors would. An agenda item before the Board would be necessary. Board Member Jeffries said he is not sure he supports this policy, but was appreciative of the information.

Board Member Edwards said that Supervisor Jeffries nailed it. Board Members find themselves in the unenviable position of being the keeper of the accountability for the jurisdictions they represent. Communication that Board Members have with their city or county staff is a key. The reason for this policy today is because of the beginning of the MSHCP process. This plan is first to make it thus far, and the federal government see RCA as the beta. To say that RCA is making this up as it goes along sounds terribly unprofessional, but in a sense is true. Rules and protocols needed to be established whereby Member Agencies would enforce rules within their own jurisdictions that would benefit the good of the whole MSHCP. The MSHCP was established to help Member Agencies streamline the development process throughout the county. Because of the MSHCP, everyone knows where the protected species are and the corridors have been protected through land acquisitions. As a result, cities are able to fast-track development because each individual development does not have to do a complete environmental impact report, which saves a lot of time. She thanked Board Member Ingram for helping RCA to incorporate the developer side of vision into these policies. When these policies were first established, RCA did not know every step. It was not known how Member Agencies would be encouraged or cajoled to cooperate, yet Member Agencies did cooperate by signing onto the MSHCP. Now RCA has to enforce non-collection of funds. If there is no mechanism to collect funds, RCA cannot buy the property that is required to protect the MSHCP that will make everything work and everything move forward quicker. That is where RCA is, and Board Member Jeffries is right,

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“we are our own friend and enemy” in this regard. The RCA has seen a pattern over the years and a lot of it has to do with the fact that there were no black and white policies in place, nor can there be black and white policies in place because RCA wants to defer to local control and that is way government needs to operate. Member Agencies have to maintain some control over their development processes. She asked how RCA can accomplish that and construct these rules and policies to allow that to occur. That is what RCA is doing now. Each Board Member is an individual with their perspective city/county, yet policies need to be established for the good of the whole or it will implode and will not work. People are watching RCA. It is not fun to see how sausage is made, but that is how it's made. The monies owed to RCA or the extensions granted are the result of there being no black or white pattern. RCA cannot dictate to its Member Agencies, nor does it want to. By signing onto the MSHCP, the cities/county agreed to be part of the process. RCA needs to clarify the process so this does not continue to happen. She asked if Board Members can start today to implement a process moving forward to clarify things. Staff has worked so hard to find that policy that will still allow Member Agencies to be independent in some way, which is what everyone wants. The policy may not be perfect, but the Tolling Agreement allows negotiations with those Member Agencies that either did not understand at the time, extended development agreements because they thought it was their right to do so, or just did not collect the fees. The Board of Directors needs to move forward from today with a clearer idea of how this can work and still try to have balance regarding local control. She suggested moving forward knowing that there is the ability to go back and negotiate with those cities in some way, shape or form. If you look at the balance sheet, to just write everything off that has occurred from the beginning until now is going to hinder the RCA's ability to follow through with acquisitions for the MSHCP. The policy may not be perfect, but it's for the good of whole which eventually benefit all members through the development process. She suggested starting today and moving forward to allow staff the ability to negotiate the past, knowing that any that what happens will end up before the Board. She further stated that there needs to be a solution to this issue. She believes it's working through these policies as Member Agencies to try to make the MSHCP work in accordance with the agreements that each agency signed onto. She apologized for the long speech. She said there needs to be clarity in the process, and it is her belief that the Member Agencies want to follow a process but are not sure what the process it is.

Board Member Melendrez seconded the motion made by Board Member Edwards.

Chairperson Pro Tem Benoit said he did not hear a motion and asked if there was a motion.

Board Member Edwards said yes, it was a motion unless there is a better solution on how this needs to be addressed.

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Chairperson Pro Tem Benoit said there were a lot of comments in the queue.

Board Member Melendrez said that when a policy is established, it is because there is a need for it. He asked legal counsel to expand upon some of the challenges that are being experienced.

Steven DeBaun gave examples of development agreement extensions and city infrastructure contributions for city constructed projects that have not been paid on a timely basis or not paid at all.

Honey Bernas, Director of Administrative Services, added that there are a variety of different issues and that most of the Member Agencies are working with RCA. The purpose of the policy is to allow the RCA and Member Agencies, who are working together to resolve issues, to continue the negotiations, which sometimes take years, without the statute of limitations running. Staff and Member Agencies have several meetings over several years, and it's a complicated process. There are creative ways to work out the delinquencies, but the process is time consuming, which can allow the statute of limitations to eventually run. Entering the Tolling Agreements would benefit both the Member Agency and RCA, and avoid RCA staff needing to inform the Board that the statute of limitations is running out and that a decision needs to be made to write off the funds, file a lawsuit or decertify a Member Agency for Measure A. In her opinion, the policy helps by allowing the Member Agency and RCA to work together for a longer period of time.

Steve DeBaun thanked Honey Bernas for her input. He also mentioned another type of problem would be fee increases that have not been implemented in a timely manner or not at all. Some of the issues are more of a mechanical nature, which may not happen in the future. All Member Agencies are now used to how things work. In the case of contributions for civic and infrastructure projects, sometimes the Member Agency does not recall there is an obligation to pay for their own construction projects under the MSHCP. Member Agencies think of developers having to pay but not their own projects. City infrastructure and development agreement extensions are the two main issues that are being faced. Board Member Melendrez said this policy will elevate and really bring focus on what is needed to be more effective and efficient on RCA fee collections.

Board Member Krupa advised that both she and her city attorney had questions. She stated for the record that the City of Hemet does not have any fee disputes and has passed their annual audits every year with flying colors. She quoted the city attorney's point of view stating, "The concept of the idea of entering into a Tolling Agreement is a good one. It enables all the parties to work to resolve the dispute without the looming deadline of a statute of limitations which can cause one party to

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file lawsuit and change the dynamics of the resolution process and increase its costs. Tolling Agreements push out the time of the applicable statute of limitation until the parties resolve the item or reach stalemate.” She assumed that to be true, and Steve DeBaun concurred that it was.

Board Member Krupa continued to read the city’s attorney comments, “There are several things RCA should be aware of however. Only member entities that RCA sends an insufficient payment notice to will be required to enter into the Tolling Agreement.” She asked if that was correct, and Steve DeBaun answered, “yes.” Staff believes there has to be some form of notice provided, otherwise it would be unfair. Steve DeBaun said RCA could adopt a policy that requires every agency to waive everything, but staff decided it was more appropriate to have the obligation triggered upon a written notice provided by RCA to the Member Agency.

Board Member Krupa continued to read from the city attorney’s comments stating, “It’s unclear when exactly when the Tolling Agreement will be required. The resolution indicates that it is required simply after the RCA notifies a Member Agency of inadequate payment. The staff report says that the Tolling Agreement is required after an audit has been completed and there are audit comments. The members have an interest in determining when the Tolling Agreement will be required of them. Is it only after an audit has been conducted and the auditors have noted a payment issue, or is it simply after RCA believes there is a payment issue and sends the Member Agency a notice?”

Steven DeBaun stated that if there is a discrepancy, what is stated in the policy is what is being proposed. The reason for that is that it’s not triggered only upon an audit. It could be triggered upon an audit or a finding by the RCA through outside means. There are a variety of ways fee discrepancies come to light. Not only the audit.

Board Member Krupa said it would be more beneficial if the discrepancy came up before an audit has been accomplished due to the fact that the audit usually occurs a year or so later.

She stated that the city attorney said that the proposed Tolling Agreement requires Member Agencies to waive any requirement that RCA first file a claim against the Member Agency as may be required under state law or the member’s claim’s ordinance. She explained that this was just factual information that she wanted to confirm. Steve DeBaun explained that there are two types of statute of limitations that come into play. There is a general three year catch-all statute of limitations that applies to these sorts of money disputes. The other is claims against a public agency. When there claims against a public agency, there are claim presentation requirements, and such claims require that RCA file a claim within six months and

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pursue a lawsuit within the next six months. Legal counsel views that as a statute of limitations issue. The policy freezes or waives the requirement to file the claim presentation and treat all under a three year statute of limitations and freeze the statute of limitation during the negotiations.

Board Member Krupa stated that the city attorney's final point is that the policy clearly states the statute of limitations on RCA suing a Member Agency, but the language is not clear that it also tolls the Member Agency's assertion of counter-claims and defenses by the Member Agency or any causes of action the Member Agency may have in its own right against RCA. Such rights should definitely be clearly called out as tolled in the agreement, which should be a relatively easy fix. Steve DeBaun stated that he found the concept clearly acceptable. The policy requires that the agreement be in substantially similar form. Each attorney has their view. Counsel is trying to provide that flexibility in the policy and understands the city attorney's concern.

Board Member Krupa reiterated the city attorney's comment that the concept and the idea is a good one and allows all the parties to work to resolve a dispute.

Board Member Hewitt stated that this policy provides RCA another tool. The City of Calimesa has used tolling agreements in their city. It's a really great thing especially given that it can take a year or two before the discrepancies are identified through the audit. This can avoid lawsuits, which cost a lot of money. His biggest concern is the cost for both sides to write up a Tolling Agreement, and if the tolling is going to be ongoing, the attorneys on both sides are going to make money. He does not want to see that. The Tolling Agreement provides opportunity to resolve issues and can be used as leverage if there is no resolution over a certain amount of time. He said that Tolling Agreements put a little more fire in the belly so to speak. He thinks it is a great idea and merely a tool that does not address if what these Member Agencies are doing is right or wrong. He believes it is a great deal.

Board Member Ingram asked if Measure A was passed in 1988. Steve DeBaun said no and stated that there is an updated Measure A that he believes passed in 2002, effective 2009. Board Member Ingram asked if it was after the conception of the MSHCP, and Steven DeBaun responded in the affirmative. Board Member Ingram stated that basically what this policy does is say that RCA is governing by guillotine, and he has a problem with that. He stated if he was going to implement or even consider this policy, the first thing he would look at is how long a Member Agency's funding would be taken away for. He asked if the amount owed is \$200 thousand, and the city has \$3.5 million of Measure A funds that are due to them, is the portion that is owed RCA taken or if the entire \$3.5 million gets tied up. He stated that he did not think it was constitutional and against the ex post facto. He could not envision a Member Agency agreeing to retroactively give their rights away. If a

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Member Agency was willing to sign an agreement and willing to negotiate, that would be fine. In his experience during his 51 years on earth, he does not sign documents with government for any reason because it is unknown how long one is extending that out into the future. This would have to be clearly defined, including the policies, enforcement mechanism, impact, how long it would take, and the cost associated before he would ever approve such a policy. He said that RCA is clearly taking rights away from Member Agencies and by doing so what are the consequences and what are the repercussions if Member Agencies choose to challenge RCA and sue. He would like to know if there would be any impact, and this is something he would like to explore.

Steve DeBaun stated that he would attempt to address some of Board Member Ingram's concerns. As far as the loss of Measure A, if a Member Agency is found not to be certified, that would be an RCTC question as to how they have dealt with it in the past. It has only been exercised once, and it was a total loss of Measure A. The viewpoint of RCTC will need to be sought. As to the constitutionality or ex post facto, the requirement to be an active participant in the MSHCP was clearly known since 2002 and has been in effect since 2009. There are no new requirements being imposed on an ex post facto basis. The policy simply states that for the future. The policy initially did include going back and requiring the policy for those that had outstanding fees. That was rolled back to merely directing legal counsel to try to negotiate. At its core, the Measure A requirement has been there since 2002, and effective since 2009.

Board Member Ingram stated that it is RCA's only enforcement mechanism, and it is governing by guillotine. He asked how RCA can gain the ability to sit down and work with Member Agencies. He stated that he has an issue with RCTC being in control of Measure A funding and then using that as a mechanism as enforcement rather than having better policies and better auditing processes.

Steve DeBaun agreed with Board Member Ingram and said that is one of the reasons for the Tolling Agreement. Legal counsel believes that decertifying an agency under Measure A is somewhat of a guillotine, which is why another mechanism is being sought for resolving disputes.

Board Member Ingram asked how RCA can create clear, concise policy that can be reviewed and implemented. He asked how many Member Agencies are in arrears that RCA is currently negotiating with. Steve DeBaun answered that there are six cities in arrears.

Board Member Ingram asked if they have been approached for entering Tolling Agreements. Steve DeBaun said none have been approached since this policy is not in place.

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Board Member Ingram asked if Tolling Agreements are part of any negotiating process that the attorney can use at will. Steve DeBaun answered, "Yes, absolutely."

Board Member Lorimore asked if there is anything inhibiting RCA from engaging in Tolling Agreements at this time to keep RCA from going into litigation. Steve DeBaun answered, "no." On a going forward basis the intent was to create a road map, a clear set of policies that all the Member Agencies could be aware of so that the Board and staff would not be in position of picking and choosing how to treat Member Agencies. With regard to existing fees, it provides only direction with results reported back to Executive Committee and ultimately to the Board if there was any further action.

Board Member Lorimore stated that the resolution is not only the carrot, but also the stick. The carrot side with regard to the Tolling Agreement has not been utilized while still being able to stay away from litigation.

Steve DeBaun said he does not think that only the Tolling Agreement is only the carrot. He would not recommend entering into a Tolling Agreement that was not very similar to what is before the Board. In a Tolling Agreement, both parties have to come together and agree to certain guidelines. The Tolling Agreement is fairly straight forward, but at the same time protective of RCA.

Board Member Ruiz asked what current methods legal counsel has used to approach Member Agencies that are in arrears. Steve DeBaun said it's been primarily staff to staff negotiations. The attorneys have been involved in one case. Board Member Ruiz asked how RCA has resolved issues in the past. Steve DeBaun replied that some have been resolved by compromise. In some cases, the cities have agreed to provide property in lieu of payment of fees. There have been several resolutions in the past.

Board Member Ruiz said that she and other Board Members are concerned with the policy being applied retroactively. She stated that Tolling Agreements have been a tool available for legal counsel to use and that she did not understand why counsel had not used it. She asked why the policy is required now when legal counsel has not utilized Tolling Agreements.

Steve DeBaun said it's a matter of having a consistent policy. It has been discussed at the Executive Committee in the past. The Executive Committee has not asked legal counsel to pursue Tolling Agreements. It is difficult to pick and choose so this policy provides clear direction from this Board as to how to deal with future fee disputes.

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Board Member Ruiz asked if RCA has the ability to take a Member Agency's entire Measure A. She said that if a Member Agency owes \$200 thousand and loses \$3 million, that is a problem. She understands that it is a negotiating tool, but that is a lot of money to lose. It is a hatchet. The length of terms is another concern she does not see addressed.

Steve DeBaun stated that is an issue that ultimately RCTC would resolve, but it would certainly be something that RCA would be involved in, and there is clearly no intent to be punitive. The RCA is merely trying to find a way to ensure that the Member Agencies comply with the rules that are adopted by the RCA, as well as the MSHCP. The RCA would be working with RCTC to ensure there was no punitive aspect to any action taken.

Charlie Landry, Executive Director, said that RCA has never used this tool. Because of the effect, RCA is reluctant to use it. RCA would much rather work with the Member Agencies, which is why RCA brought the Tolling Agreement to the Board. This will give RCA a tool and provide a path so that all are treated the same. Currently, the only options are a lawsuit or Measure A decertification. Steve DeBaun reiterated that those are the only two options currently available. RCA has internally referred to Measure A as the nuclear option. RCA staff and the Executive Committee have been very hesitant to go in that direction.

Board Member Ruiz asked how many times RCA has had to file a lawsuit. Steve DeBaun responded that legal counsel has not yet filed a lawsuit on behalf of the RCA. Board Member Ruiz asked if RCA is trying to resolve these issues quicker by putting this policy in place. Steve DeBaun said that it would provide another tool in the tool box. This provides a mechanism to keep Member Agencies interested and not disadvantage RCA in continuing to negotiate so there will not be a large debt that could not be recovered or necessitate pulling out the nuclear option.

Board Member Jeffries said that so much of what Board Member Edwards said is true. There is so much common sense in the policy, but on the other hand, he appreciates the thorough debate because at the end of the day, RCA is asking Member Agencies to surrender some authority that the voters and the constitution have granted them. RCA is stating that Member Agencies will enter into a Tolling Agreement or otherwise will pay a price. This should be taken very seriously by every Board Member in attendance. It's a big ask to surrender that authority. One could probably make a case that it should never be done, but RCA is trying to avoid other consequences. The one consequence raised should never occur, but what the policy sets the stage for is having one development project dispute interrupt or endanger all funding to a Member Agency. Before going forward with this policy, it needs to be determined that is not a possibility. He was unsure how RCA would accomplish that. If RCA withdraws the Measure A certification, there is no way to

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prohibit RCTC from overreacting and cutting off all funding when that was not RCA's intent, but it could happen. Measure A withdrawal should only be for the disputed amount and not to sacrifice all funds that a Member Agency is entitled to.

Steve DeBaun replied that is a fair point. The policy as worded does not require the loss of Measure A in the event that the Tolling Agreement is not entered into. The policy states that the RCA Board may decertify. It's not binding the RCA's hands to make the decertification determination. That language was inserted knowing that RCA did not want to create a predetermination of what the Board's action would be. Steve DeBaun stated that he would be happy to discuss this with RCTC staff and get more information on Measure A and report back the result at the next meeting. He reminded Board Members that the statute of limitations runs every month that the agreement is not executed.

Board Member Jeffries appreciated legal counsel's point; however, RCA is not in litigation. This policy is almost a solution looking for a problem. There is no litigation so the urgency of this is questionable. What is the point of rushing this policy through if RCA is not at the point of a lawsuit with any Member Agency.

Steve DeBaun said this policy only applies to future fees. So there is no knowledge of what is out in the horizon. The next fee dispute is unknown. While RCA has agreements with Member Agencies to settle some of these claims, there are other claims that are pre-2013 that staff was never able to settle. There are obligations pending and the longer RCA waits, the harder it will be. Regarding the July 1, 2013 claims, the Board might decide not to go back that far if policy approval is delayed. He stated that a one month delay will not make a difference, but with each delay, it becomes harder and harder to go back.

Board Member Jeffries said this is his first time considering this issue and as an elected official. He appreciates the opportunity to work through the policy and address all of the issues that require clarification and may come up at the first public hearing. He felt the Board was being rushed into approving the policy, and it is his preference to have more thought put into this decision. He asked legal counsel to repeat the content of the discussion regarding the three year statute of limitations.

Steve DeBaun said there are two statutes of limitations. One is the government presentation claim, which is a six month claim. The second is a general catch-all statute of limitations that is a three year claim. The July 1, 2013 date is basically three years prior to the date this policy is being considered. RCA went back three years, which is the maximum statute of limitations to collect. He reiterated that the longer RCA waits to approve the policy, the harder it will be to justify that date, which will end up being a later date.

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Board Member Brown asked for confirmation that RCA still does not have a policy on this issue going forward and that the Board discussed this matter two or three months prior and a policy on waivers was to be forthcoming. Charlie Landry stated that the fee credit policy was discussed previously. Steve DeBaun clarified that the fee credit policy is a separate policy that is still under consideration. Board Member Brown asked if the Tolling Agreement policy affects Fee Credit policy. Steve DeBaun stated that the Tolling Agreement is a mechanism for overall collection and does not have a direct relationship to the Fee Credit Policy.

Board Member Brown stated that there is a reason for a statute of limitations. The fact that RCA created an ambiguous contract in the first place that the Member Agencies have joined onto is readily apparent to him. If the contract was clear on the expectations and the requirements, the Board would not be considering this policy. It would be a fait accompli that the requirements are what they are. It appears to him that there is a good legal case to be made against the RCA's position and that RCA would face a very real possibility of losing these issues if they went to court. He could not see how an attorney would bless this policy, especially being made by people who are not attorneys. The RCA Board is granting the RCA organization rights that are not agreed to by the legal staff represent Board Members. He is unable to support the policy for that reason. Secondly, he foresees an incredible amount of legal expenses, while not getting to the heart of and resolving the issues because there are many questions, and those questions all involve a lot of legal fees going back and forth. He believes that is a mistake. He said that Canyon Lake does not have a stake in this game, but he would not want Canyon Lake's attorney hobnobbing around trying to resolve these issues at \$200, \$300 or \$400 per hour. The issue needs to be resolved, and the only way it will be resolved is with clear definition going forward on what the requirements are and somehow this will have to be brought forward for decision. RCA will not be able to mediate with every entity involved. Some members will be smart enough to say no and will likely need to go to court to get the matter resolved, which sounds like a waste of legal monies.

Board Member Johnson said that she had been patiently awaiting her turn to speak because the City of Lake Elsinore is one of the six cities and the one city that has legal counsel involved. She also sits on the Executive Committee. She thought it was important to know that this policy is dealing with future issues. Although she does not love this policy, it is a way for RCA to be successful in the future. She made reference to Canyon Lake's representative's statement that he did not want his legal counsel hobnobbing around. The City of Lake Elsinore's legal counsel has been hobnobbing around for the better part of her elected time on RCA, which is nearly four years. Although this policy may not be perfect, it is definitely a way to move forward. Regarding the current disputes, the Board has been guaranteed that this policy deals with future issues. With audits being standardized and being

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performed on a regular basis, RCA is continuing to make policy that ensures RCA's success because those audits are key. That is the reason why the City of Lake Elsinore has been dealing with this for four years. They cannot agree on something that did not take place. She finds comfort in that. She is not happy with the entire policy, but is ready to support it for the success of RCA. This Board can go on all day talking about the challenges, but if the Board does not move forward with a structure, RCA will continue to have these issues for the entirety of RCA. This is something the Board needs to give city and RCA staffs. It is a tool in their tool box. Measure A is definitely the nuclear resort, and it needs to be known going forward.

Board Member Krupa said she is in favor of this policy going forward because it sets a level playing field and so much is unknown with RCA. The more that is learned, the more level guidelines can be put in place. With regard to the six cities that have issues at this point, she asked if they nearing conclusion and if this policy will impact them in any way, either negatively or positively. She asked if those members could be included in this policy and if it might result in a positive outcome by avoiding litigation costs.

Steve DeBaun answered that RCA is moving to resolution on all six members that are still in play. Their reaction to signing a Tolling Agreement is yet to be seen, but his sense, after speaking to their legal counsels and staff to staff discussions, is that all of them are moving forward in a positive direction. He is of the opinion that all issues will be resolved in a way that is acceptable to both parties.

Board Member Krupa emphasized that should would not want to vote on a policy that could have a negative impact on the members with existing disagreements based on the fact that RCA did not have anything in place to handle those disagreements.

Board Member Moyer stated that the government presentation is six months, and asked if one has six months to sue after that, to which Steve DeBaun responded in the affirmative.

Board Member Moyer stated that he understood legal to say that there is another six months to sue after that, and there is basically a one year statute of limitations on the government presentation. Steve DeBaun stated that was basically correct. Board Member Moyer did not see how this policy would force things to move quicker if Member Agencies are aware of the one or three year statutes of limitations. He asked if tolling and allowing members infinitum to negotiate will make things move quicker. In his opinion, one is more apt to try to resolve the issue as quickly as possible when there is a deadline. The other concern is that it coerces Member Agencies into signing a Tolling Agreement in fear of losing their Measure A funds. That is basically coercion, sign it or else. He thinks Member Agencies should have

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an option that is longer. He suggested that on Page 2, I.A. rather than forcing the Member Agency to sign within 90 days, that the limitation be based on prior to the expiration of the statute of limitations.

Board Member Bash expressed his confusion because he remembers when cities could not build anything and that has been forgotten. He recalled when large pieces of land in Corona and Norco could not be built upon because of a mouse. He asked why Member Agencies not paying. He stated that the Plan is pretty clear to him and asked why negotiations necessary and what are the circumstances.

Steve DeBaun answered that there are concerns over development agreements, appear to be one of the larger problems, whether it is the terms of existing development agreements or extensions of those agreements. Secondly, are civic/infrastructure contributions. These are the two areas.

Board Member Bash asked if the disputes are over projects that have been built or are being built. Steve DeBaun stated that the disputes are triggered when the fee should have been paid. The projects have been built or are in the process of being built.

Board Member Bash stated that by belonging to the RCA, one is saving five to ten years on a project. He knows of a piece of property off of Highway 15 that sat forever and could not be developed because of a mouse. He mentioned the comments regarding "guillotine" being made and suggested that members quit, go to a different group, do it themselves, and then nothing will get built in that city because of the difficulties that will be encountered. He stated that it was not his intent to be rude. He said that perhaps Canyon Lake may have a point, and asked if it is not clear what one has to do or what the fee structure should be. He asked what the disputes are and if Member Agencies were just not agreeing on the amount they should pay. He questioned why Member Agencies are not paying. Does RCA not have agreements that were signed onto by Member Agencies who became part of the organization? It appears RCA is just trying to find a way to get people to pay their bills. He asked Charlie Landry if he was missing something. He is a son of a developer who would sit on land for a decade because it could not be built upon because Fish and Game, along with other organizations. He asked why people are not paying.

Charlie Landry said there are a variety of issues ranging from not imposing the correct fee, development agreement exemptions or extensions, and civic/infrastructure contributions.

Board Member Bash asked that everyone to remember why RCA was formed.

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Board Member Ingram stated, with all due respect to Norco and Board Member Bash's position, that he has been a developer for 35 years and has dealt with this. Many hours have gone into this issue. This is not an issue about RCA/MSHCP. This is about having a process that has fair and clear policies and defines what the intent is, which is why RCA is in the situation it is today. He has spent weeks working with RCA staff that has been diligent on working on these issues, especially in lieu of fees. The reality is that RCA has never had policies that have been enforced. What is happening here is a slippery-slope at best. If there is a dispute over \$50 or \$100 thousand, and Member Agency receives \$5 million in Measure A, RCA does not have the right to tie that money up. If staff wants to return with a resolution that states Measure A funds in the amount owed will be withheld and the Member Agency receives the remaining portion of their Measure A funds, he would be more than willing to entertain that. Board Member Ingram stated that he wants rules in place. He gave the analogy that it does not matter if you go to DMV, the doctor, or an insurance company. Everyone has a policy to adhere to. As an agency, RCA needs to make sure that there are policies that staff can enforce without running back and forth and the mechanism that triggers that, which does not exist. Non-payment is the whole reason for this policy. The money was not collected, or collected and not given to the RCA. He suggested that rather than the Member Agency collecting the fees, having RCA collect the money, which would take one step out of the loop. Board Member Ingram stated that he wants policies in place that make sense and for RCA to be proactive rather than reactive. The policy is fixing something that really does not really need to be fixed because RCA has the option to sit and negotiate a Tolling Agreement at will. He asked legal counsel if this matter was discussed with RCTC.

Steve DeBaun stated that he had not discussed with RCTC the ability, if any, under Measure A to cut off only a portion of the funding.

Board Member Ingram asked why that wasn't done before bringing this matter before the Board, which would have been prudent. In his opinion, that is something that needs to be looked at as an option. Decertification of Measure A is a nuclear option that he would never use. He does not like governing by fear. Decisions should be based on what is right. He asked legal counsel to find out if the option to hold only a portion of Measure A is available and incorporate that into the policy. He thanked staff for the fabulous job they have done on this policy. His issue is not with staff, but with the policy and how it is being set-up. He does not like being reactive.

Board Member Knight said that City of Beaumont is Measure A challenged. She received a lengthy e-mail from their city attorney regarding this policy, and he was not negative. The city has paid \$1,027,000 in mitigation fees to RCA. The city does and has had an ordinance in place for a very long time. Coming from the city and the issues they have dealt with, she stated that something needs to be done going

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forward. There has to be a clear, consistent policy that Member Agencies understand in place. The issues are so complex that there has to be a way to deal with these issues; for example, a Tolling Agreement or something similar. Thus far her experience with Tolling Agreements has been positive. It allows time to solve problems rather than going further into a very expensive lawsuit. This is a tough issue, but as far her and her city's perspective, she is willing to move forward, but after carefully reviewing a consistent, clear policy.

Board Member Hewitt made a motion to accept Resolution No. 2016-011, Resolution of the Board of Directors of the Western Riverside County Regional Conservation Authority Implementing a Policy requiring a Tolling/Waiver Agreement by Member Agencies During the Resolution of Certain Fee Issues with the caveat that I.B on page 2 be changed to only result in Measure A funds in an amount not to exceed the amount in dispute at the time.

City of Norco seconded the motion.

Steve DeBaun responded that the concept regarding Board Member Hewitt's motion is completely understandable and fine. However, his concern is that the RCA Board is placing something in the policy that RCA is unable to control.

Board Member Edwards agreed with legal counsel because RCA is unable to dictate to RCTC how it will move forward. The RCA has no governance over Measure A funds. While in concept it is a great idea, RCA does not govern those funds. The policy could be established, but it would mean nothing.

Board Member Hewitt said the policy can be established without regard to RCTC. There has to be a way to do that without including RCTC. RCA has the power in this body to do that. The concerns that Supervisor Jeffries and several others brought up during their comments are that it not be that guillotine and to not hold an entire city hostage, but there must be an enforcement measure. Otherwise, why does RCA exist?

Steve DeBaun advised that RCA does not receive any share of sales tax revenue, nor has it any control over the Measure A funds. RCTC has sole control over Measure A. The only responsibility of RCA, WRCOG and CVAG is to certify compliance. Under the ordinance, it's either a yes or no if Member Agencies are in compliance. Staff and legal counsel can work with RCTC to try to come up with a minimal or half amount, but placing it in RCA's policy will not make that happen.

Board Member Hewitt suggested that legal counsel speak to RCTC immediately and bring this policy back next month so that RCTC has a partial decertification program.

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Board Member Johnson made a substitute motion that the RCA Board direct staff and legal counsel to meet with RCTC and report back to the RCA Board next month. The Board needs to know if withhold a portion of Measure A is possible before this policy can be adopted.

Board Member Edwards asked what the motion was.

Board Member Johnson reiterated the motion to have staff discuss with RCTC if RCA could work with them on the Measure A funding before RCA adopts the policy.

Board Member Edwards asked if the RCA Board is adopting with a change or not.

Board Member Johnson answered that her substitute motion is not a motion to pass the policy. It is just for staff to come back with more information.

Chairman Pro Tem Benoit clarified that the motion is to continue the item and report back with more information. He asked who seconded the motion.

Rose Esparza confirmed that Board Member Ruiz seconded the substitute motion.

M/S/C (INGRAM/RUIZ) to continue Resolution No. 2016-011, *Resolution of the Board of Directors of the Western Riverside County Regional Conservation Authority Implementing a Policy requiring a Tolling/Waiver Agreement by Member Agencies During the Resolution of Certain Fee Issues to July 11, 2016* RCA Board of Directors meeting to allowing staff and legal counsel to consult with RCTC with regard to Measure A fund withholding.

Ayes 17, Nays 1 (MELENDREZ), Abstain 1 (BROWN)

City of Corona/Haley voted Aye on this item, yet malfunction with electronic voting system occurred so 16 Ayes votes were tallied by electronic system yet 17 Ayes occurred.

Board Member Rabb left the Board Meeting at 1:35 p.m. and did not vote on this item.

10. EXECUTIVE DIRECTOR'S REPORT

10.1 Identification Badges for RCA Board Members - Charles Landry, Executive Director, advised that Board Members are able to obtain County ID badges to help them get through security at the County Administrative Center. County Human Resources Department has made staff available for any Board Member wishing to obtain their ID badge before and after the Board meeting.

If interested Board Member were to see Kristin Staudenmaier for more direction or an appointment can be arranged at another time.

10.2 Update Concerning Revised Fee Credit and Waiver Policy – Charles Landry, Executive Director, updated Board Members that the policy has been briefed to the Executive Committee. The Executive Committee directed staff to resend the revised policy to all the Member Agencies for review, and comments were requested by June 27, 2016. Depending on the comments received, the policy will be brought back to the Board at their July 11, 2016 or September 11, 2016 meeting.

10.3 Loan Program – Charles Landry, Executive Director, advised that there was no new information to report.

Charles Landry advised that several copies of the latest newsletters were given to each Board Member for distribution.

11. LAND ACQUISITION

Charlie Landry, Executive Director, reported that as of the last RCA Board of Directors’ meeting, no additional acres were acquired. Therefore, the reserve remains at 53,095 acres.

12. ITEMS FOR NEXT MEETING

Chairman Pro Tem Benoit asked if any Board Members had items for the next meeting. There were no items requested.

13. CLOSED SESSION ITEMS:

13.1 CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Pursuant to Government Code Section 54956.8

Negotiating Parties: RCA – Executive Director of Designee

Under Negotiation: Price/Terms

Item	Assessor Parcel No.	Property Owners
1	935-380-018	John Hong, Susan Hong Palm Realty Company

After Closed Session, the meeting was reconvened. There were no announcements from Closed Session.

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16. ADJOURNMENT

There being no other items before the RCA Board, Chairman Montanez adjourned the meeting at 1:54 p.m. The next meeting of the Western Riverside County Regional Conservation Authority Board of Directors is scheduled for Monday, July 11, 2016, at 12:30 p.m., at the County of Riverside Administrative Center, Board Room, 4080 Lemon Street, Riverside, California

Prepared by:



Rose Haro
Administrative Manager

Respectfully submitted:



Honey Bernas
Clerk of the Board