

*Regional Conservation Authority***RESOLUTION NO. 08-011**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY MAKING A FINDING THAT THE MEMORANDUM OF UNDERSTANDING ENTERED INTO ON JANUARY 16, 2008, BETWEEN THE WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY, THE COUNTY OF RIVERSIDE, AND ANHEUSER-BUSCH, INCORPORATED, IS VOID ON ITS FACE AND HAS NO FORCE OR EFFECT**

**Staff Contact:**

**Charles Landry  
Executive Director  
(951) 955-9700**

**Background:**

On January 16, 2008, RCA entered into a Memorandum of Understanding between, RCA, the County of Riverside, and Anheuser-Busch, Incorporated. The MOU contains conditions precedent which the parties must satisfy in order for the MOU to move forward with implementation of the terms and conditions set forth within the document and Section 2(a) of the MOU states that the MOU shall not be subject to any third party appeal or litigation. In Section 7, the MOU mandates that the Agreement implementing the terms and conditions set forth in the MOU be executed by the Board of Supervisors of the County of Riverside and the Executive Board of RCA, no later than 43 days after the filing and posting of Notice of Determination ("NOD").

On February 19, 2008, and February 20, 2008, Andrew D. McElhinney and James and Marcelet Stimmel (respectively) filed Verified Petitions for Writ of Mandate and Complaints for Declaratory Relief against the RCA, County and Anheuser-Busch relating to the MOU, (*Andrew D. McElhinney, et al. v. County of Riverside, et al.*, Case No. RIC 493233; and *James Stimmel, et al. v. County of Riverside, et al.*, Case No. RIC 493433).

On April, 23, 2008, a letter from John Condas, Counsel for Anheuser-Busch, to all parties of the MOU was received that states that Anheuser-Busch will not waive Condition 2(a) set forth in the MOU and will not proceed forward with the MOU due to pending litigation;

On April 24, 2008, a letter was received from Pamela J. Walls, Assistant County Counsel, to John Condas informing all parties to the MOU that the County will not waive Condition 2(a) set forth under the MOU and will not proceed forward with the MOU due to pending litigation.

**Agenda Item 8.2 Staff Report**

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**June 9, 2008**

On April 29, 2008, a letter from GERALYN L. SKAPIK, Counsel for RCA, was sent to Counsel for the McElhinneys and Stimmels forwarding the April 23, 2008, Anheuser-Busch letter and the April 24, 2008, County letter informing Counsel for the Stimmels and McElhinneys that the County, Anheuser-Busch and RCA will not waive Condition 2(a) of the MOU and therefore, it is County, Anheuser-Busch and RCA's position that the MOU is void on its face and has no force or effect.

Further, the time to comply with Section 7 of the MOU has expired. This resolution finds that as a result of the fact that the conditions precedent described in the recitals have not been satisfied, the MOU is void on its face and has no force or effect.

**Staff Recommendation:**

That the RCA Board of Directors:

1. Adopt Resolution No. 08-011, A Resolution of the Board of Directors of the Western Riverside County Regional Conservation Authority Making a Finding that the MOU entered into on January 16, 2008, between the RCA, the County of Riverside, and Anheuser-Busch, Incorporated, is Void on Its Face and Has No Force or Effect.

# **AGENDA ITEM NO. 8.2**

## **ATTACHMENT 1**

### **Resolution No. 08-011**

**A Resolution of the Board of Directors of the Western Riverside County Regional Conservation Authority Making a Finding that the MOU entered into on January 16, 2008, between the RCA, the County of Riverside, and Anheuser-Busch, Incorporated, is Void On Its Face and Has No Force or Effect**

RESOLUTION NO. 08-011

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
WESTERN RIVERSIDE COUNTY REGIONAL  
CONSERVATION AUTHORITY MAKING A FINDING THAT  
THE MEMORANDUM OF UNDERSTANDING ENTERED  
INTO ON JANUARY 16, 2008, BETWEEN THE WESTERN  
RIVERSIDE COUNTY REGIONAL CONSERVATION  
AUTHORITY, THE COUNTY OF RIVERSIDE, AND  
ANHEUSER-BUSCH, INCORPORATED, IS VOID ON ITS  
FACE AND HAS NO FORCE OR EFFECT**

**WHEREAS**, the laws of the State of California applicable to the general law cities govern the Western Riverside County Regional Conservation Authority ("RCA") in the manner of exercising its powers;

**WHEREAS**, RCA desires to address issues relating to the Memorandum of Understanding ("MOU") between RCA, the County of Riverside ("County") and Anheuser-Busch, Incorporated ("Anheuser-Busch");

**WHEREAS**, Andrew D. McElhinney and James and Marceleet Stimmel filed Verified Petitions for Writ of Mandate and Complaints for Declaratory Relief against the RCA, County and Anheuser-Busch relating to the MOU, on February 19, 2008 and February 20, 2008, (*Andrew D. McElhinney, et al. v. County of Riverside, et al.*, Case No. RIC 493233; and *James Stimmel, et al. v. County of Riverside, et al.*, Case No. RIC 493433);

**WHEREAS**, the MOU contains conditions precedent which the parties must satisfy in order for the MOU to move forward with implementation of the terms and conditions set forth within the document;

**WHEREAS**, Section 2(a) of the MOU states that the MOU shall not be subject to any third party appeal or litigation;

**WHEREAS**, a letter dated April 23, 2008, from John Condas, Counsel for Anheuser Busch to all parties of the MOU states that Anheuser Busch will not waive Condition 2(a) set forth in the MOU and will not proceed forward with the MOU due to pending litigation;

**WHEREAS**, a letter dated April 24, 2008, from Pamela J. Walls, Assistant County Counsel, to John Condas informing all parties to the MOU that the County will not waive Condition 2(a) set forth under the MOU and will not proceed forward with the MOU due to pending litigation;

**WHEREAS**, a letter dated April 29, 2008, from Geralyn L. Skapik, Counsel for RCA, was sent to Counsel for the McElhinneys and Stimmels forwarding the April 23, 2008, Anheuser-Busch letter and the April 24, 2008, County letter informing Counsel for the Stimmels and McElhinneys that the County, Anheuser-Busch and RCA will not

waive Condition 2(a) of the MOU and therefore, it is County, Anheuser-Busch and RCA's position that the MOU is void on its face and has no force or effect;

**WHEREAS**, the MOU, Section 7, mandates that the Agreement implementing the terms and conditions set forth in the MOU be executed by the Board of Supervisors of the County of Riverside and the Executive Board of RCA, no later than 43 days after the filing and posting of Notice of Determination ("NOD");

**WHEREAS**, the time to comply with Section 7 has expired;

**WHEREAS**, this Resolution finds that because the conditions precedent set forth above have not been satisfied, the MOU entered into between RCA, the County and Anheuser-Busch, is void on its face and has no force or effect; and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.

**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED** by the Western Riverside County Regional Conservation Authority Board of Directors finds that as a result of the fact that the conditions precedent described in the recitals have not been satisfied, the MOU entered into on January 16, 2008, between RCA, the County and Anheuser-Busch, is void on its face and has no force or effect.

**PASSED AND ADOPTED** at the regular meeting of the Board of Directors at the Western Riverside County Regional Conservation Authority held this \_\_\_\_\_day of \_\_\_\_\_ 2008.

By: \_\_\_\_\_  
Eugene Montanez, Chairman  
Western Riverside County  
Regional Conservation Authority

ATTEST:

By: \_\_\_\_\_  
Honey Bernas, Clerk  
Western Riverside County  
Regional Conservation Authority