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MEETING MINUTES

1. CALL TO ORDER

The meeting of the Western Riverside County Regional Conservation Authority was called to order by Chairman Scott Miller at 1:20 p.m., Monday, September 8, 2014, in the Board Room of the Riverside County Administrative Center, 4080 Lemon Street, Riverside, California 92501.

2. PLEDGE OF ALLEGIANCE

Roger Berg led the RCA Board Members and meeting attendees in a flag salute.

3. ROLL CALL

Board Members/Alternates Present

Marion Ashley, *Riverside County District 5*
Roger Berg, *City of Beaumont*
Kevin Bash, *City of Norco*
Ben Benoit, *City of Wildomar*
Tim Brown, *City of Canyon Lake*
Maryann Edwards, *City of Temecula*
Debbie Franklin, *City of Banning Alternate*
Thomas Fuhrman, *City of Menifee*
Jeffrey Hewitt, *City of Calimesa*
Kevin Jeffries, *Riverside County District 1*
Natasha Johnson, *City of Lake Elsinore*
Verne Lauritzen, *City of Jurupa Valley*
Andy Melendrez, *City of Riverside*
Shellie Milne, *City of Hemet**
Scott Miller, *City of San Jacinto*
Eugene Montanez, *City of Corona*
Harry Ramos, *City of Murrieta*
Adam Rush, *City of Eastvale*
Richard Stewart, *City of Moreno Valley*
Jeff Stone, *Riverside County District 3*
John Tavaglione, *Riverside County District 2*
Mark Yarbrough, *City of Perris*

Board Members Absent

John Benoit, *Riverside County District 4*

*Arrived after start of the meeting.

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At this time, Chairman Miller welcomed the return of Tom Fuhrman who has recovered from a fall that he suffered. Mr. Fuhrman thanked everyone for their thoughts and prayers for a speedy recovery and for the plant that he received.

4. PUBLIC COMMENTS

A. MaryAnn Miller of Murrieta, California, read the letter that she forwarded to Kevin Pulliam, Managing Partner of Vavrinek, Trine, Day & Co., LLP, who was contracted by RCA to perform the financial audit. She reviewed the concerns in the letter with regard to accounting disclosure and compliance with the MSHCP's capital account funding policy, as well as the presentation of the financial statements, notes to the financial statements, policies and required supplementary information. She stated that a lack of understandable, policy compliant financial statement information may create an environment ripe for political and/or personal gain. Financial statements may be enabled and can be hidden in land use Development Agreements and Limited Liability Partnerships and these are very concerning. *(A copy of the letter was submitted and is on file at RCA.)*

B. Max Miller of Murrieta, California, noted the importance of the concerns raised in the letter. He iterated Mrs. Miller's concerns that the lack of understandable policy compliance and financial statement information may create an environment ripe for political and personal gain as many financial benefits are enabled and can be hidden in land use agreements and limited liability partnerships. An organization depends on two things: 1) Fifth Amendment of the Constitution – government may not take private property without just compensation; 2) CA Civil Code 815.3 – no local government avenue may condition the issuance of an entitlement (permit) for use on the applicant's granting of a conservation easement pursuant to this chapter.

5. BOARD MEMBER ANNOUNCEMENTS

Tom Fuhrman stated the following: A) He is interested in the response on the issues raised under Public Comments; and, B) A mountain lion attacked a child last weekend.

6. ADDITIONS/REVISIONS

There were no additions/revisions.

7. APPROVAL OF MINUTES

M/S/C (STONE/FRANKLIN) to approve the minutes of the June 2, 2014 meeting, as submitted.

Ayes 21

8. CONSENT CALENDAR

Roger Berg requested that Agenda Item No. 8.2, *Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Local Development Mitigation Fee (LDMF)*

Collection and Civic/Infrastructure Contribution Reports for May, June, And July 2014, be pulled from the Consent Calendar.

M/S/C (STONE/RUSH) to approve the following Consent Calendar item:

Ayes 21

8.1 FISCAL YEAR 2014 FOURTH QUARTER CONSULTANT REPORTS

Receive and file the Fiscal Year 2014 Fourth Quarter Consultant Reports

Chairman Scott Miller opened Agenda Item No. 8.2, which was pulled from Consent Calendar, for discussion.

8.2 WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN (MSHCP) LOCAL DEVELOPMENT MITIGATION FEE (LDMF) COLLECTION AND CIVIC/INFRASTRUCTURE CONTRIBUTION REPORTS FOR MAY, JUNE, AND JULY 2014

Roger Berg pointed out that the exemptions from May through July totaled \$668,000. He realizes that some of the exemptions have been reviewed and some are under review, however, he wanted to point out that we are trying to get money for this program and all sources should be reviewed for under collections.

Chairman Scott Miller said that, under Agenda Item No. 10.4, staff will provide a status report on this matter and the work that has been done by the RCA and member cities regarding these issues.

M/S/C (STONE/FRANKLIN) to receive and file the Western Riverside County MSHCP LDMF Collection and Civic/Infrastructure Contribution Reports for May, June, and July 2014.

Ayes 21

9. FISCAL YEAR 2014 PRELIMINARY FOURTH QUARTER FINANCIAL REPORT (UNAUDITED)

Honey Bernas, Director of Administrative Services, said that the auditors Vavrinek, Trine, Day & Co. have commenced their field work on the audit. Staff does not anticipate any material corrections to the financial statements. The Cash Balance increased by approximately \$5 million. Revenues exceeded expenditures in every program. RCA acquired twenty-six (26) properties (3,000 acres) were added to the reserve. The final audited financial statements will be presented to the Executive Committee in November and to the RCA Board in December.

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Jeff Stone asked if the RCA's funds are invested with the County Treasurer and the rate of return. She stated that rate of return is less than 0.5%. Honey Bernas that RCA funds are invested by the County Treasurer and the current rate of return is less 0.5%.

Jeff Stone stated that, if it is not a mandate to use the County Treasurer, perhaps RCA should explore other institutions to safeguard RCA funds and provide a higher rate of return.

Staff will investigate Jeff Stone's suggestion.

M/S/C (STONE/FRANKLIN) to receive and file the Fourth Quarter Financial Report (Unaudited).

Ayes 21

10. EXECUTIVE DIRECTOR'S REPORT

Charlie Landry presented the following reports:

10.1 County of Riverside Minor Amendment – Beech Street

This item is for a minor amendment for Beech Street, which is a new stretch of roadway that is not covered by the Plan. The Plan covers all existing and future roads in the County General Plan and which were envisioned during Plan development. There is no provision in the Plan for providing coverage for new roads that were conceived after the Plan. However, staff has worked with the Wildlife Agencies to allow trading coverage for roads which are newly conceived by giving up coverage for roads, which may never be built. There is the ability to trade the acreage to cover the road and provide for new roads under a minor amendment. In this case, the County of Riverside is proposing to extend Beech Street to provide secondary access north of Highway 74, east of Hemet through a portion of Lakeview Mountains into San Jacinto. This is a secondary emergency road. It is a small extension; however, it was not covered. The minor amendment allows for the coverage of this road. There is agreement between the County Transportation Department, RCA and the Wildlife Agencies. This item is for information only and does not require action by the RCA Board. This is important, as this is the first minor amendment for road coverage.

Kevin Jeffries asked if the Board will know what road is being traded and its location by city and district. Charlie Landry said those items will be reported to the RCA Board prior to the trade.

10.2 Loan Program Update

Charlie Landry advised that RCA has been working to include provisions in the federal Water Resources Development Act (WRDA) and the new transportation bill

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to allow HCPs that support infrastructure to be able to get loans. The Water Resources Development Act was signed into law in June by the President. There is a new provision modeled after TIFIA which is the Water Infrastructure Finance and Innovation Authority that is under WRDA. Under that staff was successful in being able to include the language that was needed to have HCPs be able to pull loans through that. Previously Congressman Calvert had included the provision in the house version. Senators Feinstein and Boxer supported the measure. It was not included in the senate version, but Congressman Calvert through some last minute calls was able to get that provision included, which is great news. WIFIA is a new program which will have to undergo rule making by both the EPA and the Corp of Engineers. RCA met with both of those agencies in Washington, D.C., in July. RCA participated in the first round of public hearings and will continue to monitor and be involved in the process. It is anticipated that the rule making will not be complete until mid-summer next year. The loan program was included in the Senate version of the Transportation Infrastructure Finance and Innovation Act (TIFIA) legislation. The House version has not been written as of yet. Approval for TIFIA was delayed and in its place, they approved a gap measure.

On behalf of the RCA, Chairman Miller thanked Congressman Ken Calvert for his efforts and assistance to RCA.

Tim Brown expressed his unfamiliarity with the loan program and the details mentioned in the report. He suggested that perhaps a workshop be held on the loan program, to which Chairman Miller stated that the items can be brought back.

10.3 Section 6 Update

Section 6 is a source of funding to be used for match for acquisition for HCPs. The federal and state governments are responsible for one-third of the acquisition of the 153,000 acres. RCA has utilized funds and identified properties to acquire in order to exhaust the 2012 and 2013 awards, which equals \$10 million (approximately \$6.8 million federal funds and \$3 million state funds). This year's available funding for acquisition is \$18 million nationwide with a cap of \$2 million per program, which is down from \$3 million last year. RCA has requested the full \$2 million and award determination will be made within about one month. For Fiscal Year 2015, the House under the leadership of Congressman Calvert recommended appropriation of \$18 million. However, no appropriation was recommended by the Senate, which may be a negotiating tactic.

Chairman Miller noted the time and efforts by many on this effort, and he remains hopeful that progress will be made.

At this time, Shellie Milne entered the meeting.

10.4 Report Concerning Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Local Development Mitigation Fee (LDMF) Collections and Exemptions and Receive Possible Direction Regarding Same

Charlie Landry said that this item pertains to the MSHCP Local Development Mitigation Fee Collections and Exemptions and to receive possible direction from the RCA Board on this matter. Staff was directed to provide a report, by jurisdiction, on the total development fees collected from all member agencies, as well as review the development agreements and explain the ability of member agencies to grant extensions of development agreements in perpetuity. He presented a slide presentation of the following: 1) Fees collected by member agencies since Plan inception in 2004 through June 2014 totaling \$142 million. Contributions declined significantly starting in year 2006 and were limited in years 2009 through 2012. There appears to be a slight recovery at this time; 2) Review of the total unit exemptions and agreements of Calimesa, Corona, Lake Elsinore, Beaumont, Riverside, Murrieta, Perris, San Jacinto, Temecula, and the County of Riverside were reviewed.

Chairman Miller expressed his appreciation to the staffs of RCA and Lake Elsinore with regard to their work on this matter and continuing to meet to discuss and resolve outstanding issues.

Roger Berg conveyed that jurisdictions claiming exemptions should submit funds to RCA and that those funds should be placed in a trust rather than identified as exemptions until such as time as there is an agreement reached. He believes that the MSHCP is a great program. Charlie Landry stated that many of the credits have already taken place and fees were not collected. Steve DeBaun, RCA legal counsel, stated that in most cases the fees were not collected, therefore, there is no money to be provided to the RCA to be placed in trust. Roger Berg stated that the agreement states that fees cannot be withheld and must be remitted to the RCA. He stated that members should do their due diligence, collect the fees at the appropriate time, or get the property agreements with RCA and the developer, or collect the money upfront and holding it in a trust. Steve DeBaun stated that in most cases there were agreements in place that the Member Agency thought provided an exemption for the payment of the fee and, therefore, the fee was not collected. Roger Berg stated that these issues should not have taken over 10 years since RCA was implemented to come to light. He stated that there are legitimate exemptions in the ordinance, and other than that there should not be exemptions. Cities should step up and provide a plan to place the outstanding fees in the trust with RCA, especially during at a time when funds are needed for acquisition. RCA should not have to negotiate after the fact and such practice is unfair to cities following the approved process. Perhaps RCA legal counsel should come up with a plan to compel members to comply with the agreement.

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Tim Brown asked where the exemptions can be found. Steve DeBaun, legal counsel, advised that the exemptions can be found in the fee ordinance that has been adopted by each member agency. The exemptions are listed in the model ordinance that was prepared by RCA.

Natasha Johnson noted that there were agreements made prior to the implementation of the MSHCP. Lake Elsinore and RCA staffs have been working on this issue since last summer. The cities want to be responsible. This issue is not only about paying what is owed, there are legal understandings and decisions that have to take place regarding the validity of development agreements entered into prior to the Plan. She would like to see this matter put to rest while the City of Lake Elsinore and RCA are working hard toward resolution.

Richard Stewart asked if exemptions granted by member agencies are reported to the RCA staff. Charlie Landry replied that members are supposed to report exemptions and development agreements to RCA. It would benefit RCA and member agencies if exemptions are reported and dealt with as they come up.

Roger Berg stated that all development agreements, past and present, should be reported and that RCA staff should meet with member agency staffs and review development agreements. There needs to be a uniform policy on the application of exemptions.

Natasha Johnson stated that the issues are not black and white. There are a lot of layers of agreements that were established prior to the Plan. Lake Elsinore was the last city to join the Plan as they had reservations based on those reasons. She appreciates Roger Berg's request and his patience; however, the Executive Committee has talked about this matter, as well as legal counsel. When the review is complete, it will be presented to the RCA Board.

Steve DeBaun, Legal Counsel – Best, Best & Krieger, said that in almost all of the cases that he is aware of the fees were not collected and, therefore, no funds to submit to the RCA to place in trust. There were different scenarios. In most of the cases, there were agreements in place that the member agency thought provided an exemption for the payment of the fee. There are disagreements as to the interpretation of a number of the development agreements. Legal counsel believes there is a clear view toward reconciling those disagreements either by providing property in an amount equal to the amount in question or moving forward with collection of the fees. RCA and city staff have some differences of opinions regarding interpretation of the agreements and their applicability.

Andy Melendrez said that there appears to be some confusion with regard to the guidelines and they are not clear to member agencies. Perhaps there should be an update every six months. In addition, there is a need for clarity in the process.

11. LAND ACQUISITION UPDATE

Since the last RCA Board meeting, twelve (12) parcels or 1,038 acres were added bringing the total reserve land to 48,253 acres.

12. ITEMS FOR NEXT MEETING

Tim Brown asked if there are any impacts/benefits to RCA on the approved Water Bond, and Charlie Landry said that there are none with regard to the Southern California HCPs.

At this time, Chairman Miller adjourned the meeting to Closed Session.

13. CLOSED SESSION ITEMS

**13.1 CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Pursuant to Government Code Section 54956.8**

Negotiating Parties: RCA – Executive Director or Designee
Under Negotiation: Price/Terms

| Item | Assessor Parcel No. | Property Owners/Representative |
|--------|---------------------|--------------------------------|
| 13.1.1 | 932-170-014 | Monte Cristo Resources |
| 13.1.2 | 571-630-001 | Mark and Mary Oldar |

The meeting reconvened after the Closed Session. There were no announcements.

14. ADJOURNMENT

There being no other items before the Western Riverside County Regional Conservation Authority, Chairman Miller adjourned the meeting. The next meeting of the Western Riverside County Regional Conservation Authority Board of Directors is scheduled for Monday, October 6, 2014, at 12:30 p.m. at the County of Riverside Administrative Center, Board Room, 4080 Lemon Street, Riverside, California.

Respectfully submitted,



Honey Bernas
Clerk of the Board