

WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

EXECUTIVE COMMITTEE MINUTES

Wednesday, April 20, 2022

1. CALL TO ORDER

The meeting of the Executive Committee was called to order by Chair Natasha Johnson at 12:00 p.m., via Zoom Meeting ID: 853 0748 0979, in accordance with AB 361 due to state or local officials recommending measures to promote social distancing.

2. ROLL CALL

Members/Alternates Present

Natasha Johnson
Lesa Sobek
Jonathan Ingram
Kevin Bash
Crystal Ruiz

Members Absent

Kevin Jeffries
Jeff Hewitt

3. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Board Member Sobek.

4. PUBLIC COMMENTS

Ed Sauls, a member of the Stakeholders Committee, wanted to request that the RCA Board change the rules for the Stakeholders Committee to allow members to set the agenda and make recommendations directly to the Board. The Stakeholders Committee agenda was set because of the fee discussion from a previous Board meeting, but not all the issues relating to fee reimbursements were on the agenda. To have the Stakeholders Committee be successful, it needs to operate with integrity, be able to set its' own agenda, and make its' own recommendations.

5. ADDITIONS / REVISIONS

There were no additions or revisions to the agenda.

6. CONSENT CALENDAR – *All matters on the Consent Calendar will be approved in a single motion unless a Board Member(s) requests separate action on specific item(s).*

M/S/C (Ingram/Ruiz) to approve the following Consent Calendar items.

6A. APPROVAL OF MINUTES – MARCH 16, 2022

6B. WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN FEE COLLECTION REPORT FOR FEBRUARY 2022

- 1) Receive and file the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Fee Collection Report for February 2022; and
- 2) Forward to the Board of Director for final action.

6C. ACQUISITIONS STATUS REPORT

- 1) Receive and file the acquisitions status report as of February 28, 2022; and
- 2) Forward to the Board of Directors for final action.

6D. JOINT PROJECT REVIEW STATUS REPORT

- 1) Receive and file the Joint Project Review (JPR) monthly status report as of March 31, 2022; and
- 2) Forward to the Board of Directors for final action.

6E. SINGLE SIGNATURE AUTHORITY REPORT

- 1) Receive and file the Single Signature Authority report for the third quarter ended March 31, 2022; and
- 2) Forward to the Board of Directors for final action.

7. STATE AND FEDERAL LEGISLATIVE UPDATE

Tyler Madary, Senior Management Analyst, Legislative Affairs, provided an update on state and federal legislative actions. At the end of March, the National Habitat Conservation Plan Coalition (NHCP) held its annual advocacy trip to DC. During the virtual meetings, RCA staff promoted the benefits of Habitat Conservation Plans (HCPs) and advocated for increased programmatic funding for Section 6 grants as well as process improvements to maximize the flexibility and benefit of this critical federal funding. These meetings were part of a three-pronged approach for RCA and the NHCP advocacy. First, RCA staff advocate to the administrators of these programs at U.S. Fish and Wildlife Service (USFWS), second, advocate to the appropriators that authorize and fund the programs in Congress, and third, advocate to the administration officials with interest in policy streamlining that may influence the actions of the administrators at the service.

Following the virtual advocacy trip, RCA staff coordinated report language and programmatic funding requests to RCA's congressional delegation as part of the Fiscal Year 2023 appropriations process. Report language requests are a directive to agencies that Congress writes into law with a requirement that findings are reported back to Congress to provide time locked accountability. This presents an opportunity for RCA using the three-pronged approach to force a policy discussion. RCA requested that \$85 million be allocated to the Cooperative

Endangered Species Conservation Fund for HCP Land Acquisition, from which RCA regularly competes for funds. This would be an increase from the current funding level of \$21.6 million and the President's proposed funding level of \$19 million for FY 2023. Additionally, RCA requested that Congress include report language that would require USFWS to canvass all HCPs to solicit concerns and propose solutions to the Section 6 Notice of Funding Opportunity process, and report back to Congress. This was done to prompt further discussion between Congress, USFWS, and HCPs regarding process reforms.

RCA staff is tracking California Senate Bill 856, which would expand permissible methods to take or hunt wild pigs in a manner that provides flexibility for property owners and land managers seeking to protect their lands. RCA staff is recommending the Executive Committee consider support for SB 856 by Senator Bill Dodd of Napa.

Wild pigs can be found in nearly every county in the state and are known to cause millions of dollars of extensive damage per year to crops and rangelands in California and billions per year across the country. Ecological impacts include soil compaction, damage to native plant communities, reduced water quality, and competition with other game species for food and space. Wild pigs are also predators for ground-nesting bird eggs, amphibians, reptiles, and small mammals.

RCA manages reserve land in San Timoteo Canyon that is facing severe ecological impacts from feral pigs. As a reminder, RCA does not allow recreational hunting on reserve lands. Even so, the protected habitats would benefit from expanded management of wild pig populations that this bill would allow for RCA's land managers.

Board Member Ingram wanted to clarify that the \$85 million request was for the National Coalition. Mr. Madary confirmed that was correct.

M/S/C (Bash/Sobek) to:

- 1) Receive and file an update on state and federal legislative affairs;**
- 2) Adopt the following bill position:**
 - a. SB 856 (Dodd)—Support; and**
- 3) Forward to the Board of Directors for final action.**

8. LAKE ELSINORE BACK BASIN

Chair Johnson stated for the record, that there was no conflict with this agenda item for her being a council member from the City of Lake Elsinore. Steve DeBaun, general counsel, reiterated that there was no conflict by virtue of being a city council person.

Aaron Hake, Interim Regional Conservation Deputy Executive Director, provided a presentation on the Lake Elsinore Back Basin Update. This information item is on the effort between RCA and the City of Lake Elsinore to resolve a conservation issue that predates the MSHCP. City and RCA staff have been working together for several months and are in the final stages of

developing an agreement that would be brought to the RCA Board and Lake Elsinore City Council within the next couple weeks. The goal with the agreement is to provide a consistent framework for development and conservation to occur in the Lake Elsinore Back Basin.

The East Lake Specific Plan (ELSP) was going through the approval process for the sixth amendment while the MSHCP was also being developed. At that time, a consistency analysis was performed by a consultant that identified that if 770 acres of conservation were to occur in the Lake Elsinore Back Basin, the specific plan would be found to be compliant or consistent with the MSHCP. This was prior to the existence of RCA, so the County of Riverside was involved. The County concurred with the consistency analysis of 770 acres, as well as the state and federal Wildlife Agencies. However, the how and exactly where the 770 acres are, have yet to be finalized.

Of the original properties that were identified in the 2003 study, the majority were city-owned but there were some that were private property, and the City did not have the authority to declare the land for conservation. Ten years later, the City, the Wildlife Agencies, and RCA are trying to figure out how to bring the 770 acres to fruition, and the California Department of Fish and Wildlife (CDFW) updated the previous map that was created in 2003 to identify some other areas where the conservation could occur. The map created in 2013 is very similar to the 2003 map, but it includes parcels that weren't in the original and removes some that were problematic for the City. While these discussions about the updated map did occur, there was no finality or resolution.

To help resolve this issue, RCA and the City have been working on a draft Memorandum of Agreement with the goal of getting something approved by both the RCA Board and the City by June 2022, while also providing the development community a consistent path for processing applications and with the City and RCA both knowing how to review applications for the Back Basin and how to assemble the 770 acres.

The City proposes to place city owned property in the Back Basin in contingency for conservation to get to the 770 acres threshold, now, keeping in mind that about 84% of the required acreage is already conserved. As development occurs, the City will evaluate proposals to see if there are opportunities to conserve lands associated with the developments and release the contingent properties, putting new properties into permanent conservation. This also provides an opportunity for the City or other entities to acquire land to reach the threshold.

Nothing about this proposal and agreement would override or conflict with the MSHCP, and there are no other state or federal requirements that are affected. RCA's role would be to maintain the inventory and coordinate the communication between the Wildlife Agencies so everyone would have a clear record of what is being conserved, what is in contingency, and what is proposed to go from contingency to permanent conservation. RCA is not responsible to acquire the 770 acres, only to facilitate the success of the City of Lake Elsinore and the MSHCP.

This concept will be presented in greater detail to the Wildlife Agencies, they are a partner even though they are not a signatory to the proposed agreement. Following that review and any

feedback, the final Memorandum of Agreement would go to the City Council in May and the RCA Board in June.

Board Member Ingram thought this was a great proposal, so long as the City of Lake Elsinore was on board with the plan. There is a concern that when the 770 acres goes into conservation, the City would be locked in on the lakes edge or elevation and could impact development around the lake in the future.

Barbara Leibold, City of Lake Elsinore attorney, noted the conservation of the 770 acres does not affect the elevation or the flood storage capacity requirements in the Back Basin. The conservation of the 770 acres will help to balance the flood storage capacity.

Ed Sauls, a member of the public, wanted to know how a Back Basin private landowner would be able to find out if their property was going to be part of the 770 acres being conserved and if these acres will be going into the MSHCP additional reserve lands. Mr. Hake noted that the exact areas to complete the 770 acres are still being determined and will be finalized with the agreement. Once it is finalized, it would be clear to everyone what properties are being conserved and what is eligible for proposed conservation.

Tricia Campbell, Reserve Management and Monitoring Manager, added that a portion of the 770 acres would be Public/Quasi-Public Land and the remainder would go into the additional reserve lands.

This item is for the Committee to receive and file a report on the Lake Elsinore Back Basin.

9. PREPAYMENT OF LOCAL DEVELOPMENT MITIGATION FEES

Lisa Mobley, Administrative Services Manager/Clerk of the Board, noted that written public comment was received from Michele Staples and forwarded to the Executive Committee.

Michele Staples, a representative from Tri Point Homes, stated that last September it was requested that Beaumont allow the prepayment of MSHCP fees for Tri Point Homes. At the time, the City of Beaumont was concerned about whether they had the authority to accept the prepayment. Direction had been given by RCA that member agencies could accept prepayment prior to the July 2021 fee increase, but did not mention the January 2022 fee increase, promoting the city to ask for clarification. Tri Point was unable to take advantage of the prepayment because of Beaumont's unaddressed concerns. This matter was finally clarified in February 2022, with the mitigation fee handbook update. It was requested that the policy clarification be made retro-active to the fall of last year, allowing Tri Point or any other developers who were intending to make prepayments and option to pay the lower rate.

Ed Sauls, a member of the public, noted that members of the building and development industry supported the increase of fees as they were promised the ability to prepay those fees. RCA should stay consistent with the intent and the promise that was made, making sure those who are able or desire to prepay, are allowed.

Matt Wallace, Deputy Director of Financial Administration, provided information on the prepayment of Local Developmental Mitigation Fees (LDMF), also known as the MSHCP fee. The MSHCP, the implementing agreement, and the ordinances and resolutions of every city in Western Riverside County and the County of Riverside require that an MSHCP fee be collected on development and public projects. This is a pass-through fee that is collected by cities and the County and is remitted to RCA, so RCA can purchase habitat, fund a permanent endowment for management of reserve lands, and operate.

RCA does not impose the LDMF, rather RCA adopts the model ordinance that each member agency must adopt in substantially the same form. Member agencies do not have the discretion to change much about the ordinance except for when to calculate the amount of fee owed, which can either be at the time of payment or the time of permit. Member agencies who choose to calculate their fees based on time of payment, do have administrative discretion whether to allow prepayment. RCA has no control over the responsibility of this specific issue, all RCA requires in this case is that each member agency administers the fee consistent with their own ordinance.

After the RCA Board adopted the 2020 Nexus Study, RCA staff clearly and repeatedly communicated to member agencies and the Building Industry Association (BIA) what flexibility and limitations existed regarding prepayment. This communication came in the form of letters to each member agency city manager and county executive and copies of these letters were also provided to the BIA. The letters clearly stated that the RCA considered the prepayment of fees to be at the city/county discretion, and RCA approval is not required. RCA staff engaged in additional conversations with BIA and member agency staff and inquiring developers to ensure that all were aware that member agencies hold the discretion over whether the prepayment of fees is allowed. RCA staff also distributed a Nexus Study background summary to each member agency which indicated that cities and the county may accept prepayment of fees at their own discretion.

Member agencies collected nearly \$10.7 million in prepayments prior to the first rate increase on July 1, 2021. This represented 29% of all MSHCP payments made to all member agencies in Fiscal Year 2020/2021. According to RCA outreach to member agencies in 2021, nine member agencies accepted prepayment prior to July 1, 2021.

One developer with projects in member agency jurisdictions that have chosen to not allow prepayment, has repeatedly petitioned the RCA Board and staff to override the authority, autonomy, and discretion of member agencies regarding their choice not to collect prepayments. The request from this developer have included suggestions that RCA should directly collect fees instead of member agencies, allow developers to retro-actively pay pre-Nexus Study rates today, or that RCA should enter into a third-party agreement with the developer and the member agency to provide a form of fee amnesty. RCA staff has in turn, reiterated to the developer, its' representatives, and member agencies, that the member agencies have authority to decide how they wish to manage prepayments. RCA is supportive of the individual member agencies processes, so long as they are compliant with the MSHCP, the

implementing agreement, and their own fee ordinance. Member agency staff has remained supportive of RCA's position.

On February 7, 2022, the RCA Board adopted an update to the MSHCP Mitigation Fee Implementation Manual that included language that describes what was presented. This language was requested by one of the member agencies that does not allow prepayment.

Board Member Ingram noted that the intent when the prepayment offer was presented was to try and make sure the Nexus Study Update would get approved and implement it as fairly as possible. Part of the issue with some of the member agencies is when someone comes in to make a payment on fees prior to permit, there is still a fee that accrues until the permit is issued. There is a 3% increase annually until the permit is issued, leaving a gap where the cities did not collect that money and when discovered in the random audit process causes difficulty for the cities and the RCA. This is part of why some member agencies do not want to take the risk of incurring the 3% annually until the permit is issued. There should be a way to absolve member agencies from this fee.

Board Member Sobek wanted to clarify the terms of prepayments were based on the date they were received. Mr. Wallace confirmed that was correct.

Chair Johnson asked if there has been direct communication with the City of Beaumont as it relates to the public comment that was made. Anne Mayer, Executive Director, noted that yes, when these questions started coming forward relating to this specific developer, staff-initiated conversation with the city.

At the time, a committee had been established of member agency staff helping with the manual update, so the City of Beaumont was specifically invited. The best practices from other cities were also shared with Beaumont staff, to start to determine if the city wanted to implement a prepayment proposal. Several conversations were had with the City Manager of Beaumont relating to their concerns. The city was not interested in changing their practice related to prepayment.

They were very concerned that if they started accepting prepayments for projects that were not at a certain phase of development in permit issuance, the city would end up responsible for the fee gap. In addition to the increase mentioned by Board Member Ingram, also by accepting prepayment of fees there is an assumption about the development that is going to take place. If the development changes through the entitlement process and the fees collected were not correct, it would force the city go back and recollect the fees. There are a handful of member agencies that accept prepayments at different phases in the development process, and there are others, including the County, who will not accept prepayments because they do not want to incur the financial liabilities and responsibilities.

Board Member Ingram stated this was one of the reasons RCA was pushed to take direct payments and absolve the member agencies from the responsibility. There is a two-fold benefit to RCA collecting the fees, establishing the fee and collecting it would absolve the member

agencies once and for all. Once the money was taken it, short of there being a modification to impact, the fees would be collected and done. RCA taking direct payments would also get rid of the random audit process.

Board Member Ingram wanted to know if the RCA was still looking into the direct payment process. Ms. Mayer recalled there was an Executive Committee discussion about direct payments last year, and the consensus was to defer direct acceptance of payments while working on higher priority objectives. Although, even if there was a direct payment method available right now, it would not change the fact that inherent with prepayment, depending on the point time in development, there could be a differential in what the fees are. By absolving the cities of that development fee responsibility, it would then fall to RCA to monitor/track the development and be responsible for seeking additional fees if necessary.

Board Member Ingram sees direct payments by RCA as a benefit to the MSHCP. It creates consistency and trust of the agency by developers.

Chair Johnson noted that if the Executive Committee wanted to agendize the direct collection of fees again, it was possible. Though this is something that has already been discussed and exhausted. Right now, putting RCA in the position of managing prepayment does not put the agency in the best position to focus on the current goals and priorities, also recognizing that prepayment and direct collection of fees are two separate issues.

Board Member Ingram requested that this be brought back to the Executive Committee for discussion. Ms. Mayer wanted clarification on whether Board Member Ingram wanted to discuss direct payments or prepayments. Board Member Ingram thought the agenda item should be a collection as both, as he sees them as one in the same.

Chair Johnson thought the difference between direct payment and prepayment was a different conversation, as they are two different options. Ms. Mayer noted that if the conversation is about prepayment and RCA policies related to it, an item can come back again with a summary of which jurisdictions accept and do not accept prepayments, along with where those jurisdictions that do allow prepayments.

Chair Johnson asked that the proposed agenda item be brought back to the Executive Committee and include a summary of where the member agencies are at relating to the prepayment process.

Board Member Ingram stated that if a developer asked to pay and the city calculated the fee, they should have the ability to make that payment directly without incurring the upcoming increases. If the developer had the opportunity to pay the fee prior to the Nexus Study increases, would it be considered a prepayment, and were they reaching out saying they wanted to make the payment. Ms. Mayer understood what Board Member Ingram was saying, but it is still two different issues. The first is, does the city or the county allow a prepayment regardless of any differential. This is a separate question from whether RCA has an online portal allowing

any developer to pay at any time they are authorized to do so by the city. RCA being able to accept a direct payment, has nothing to do with whether a city allows them to prepay.

Board Member Ingram asked that an item stating which cities accept prepayments and, in the future, if the RCA would accept payments for those cities that do allow prepayments. Ms. Mayer stated that in addition to the information about prepayments, an item will be brought back about the online portal and any challenges associated. The financial system the RCA is currently using is still through the County of Riverside and a new system would have to be created to accept payments directly.

Chair Johnson asked that the timeline for moving the financials off the County system also be included. Ms. Mayer agreed, stating that the original transition plan would also be included.

This item is for the Committee to receive and file report on the prepayment of Local Development Mitigation Fees (LDMF).

10. FEE CREDIT POLICY REVIEW

Ed Sauls, a member of the public, requested that the recommendation to the Executive Committee include the Stakeholders Committee consensus that the ability to negotiate the compensation to a landowner, including fee credits, be open until the project is finally approved and not closed at the time of the Habitat Acquisition Negotiation Strategy (HANS) application.

Aaron Hake, Interim Regional Conservation Deputy Executive Director, provided a presentation on the Fee Credit Policy Review. This agenda item is staff's accountability to the Board from back in February to review two items regarding fee credits through the newly constituted Stakeholders Committee. The two issues the Board asked to be forwarded to the Stakeholders Committee were related to the eligibility of off-site land conservation for fee credit and a question as to whether there needed to be an adjustment to the timing of requests for fee credits for the Joint Project Review (JPR) process.

The Stakeholders Committee was at the end of March, which had a robust two-hour conversation with great attendance, dialogue, and interactions. Staff found the meeting to be very productive and committee members expressed the same afterwards. With representatives from various groups, there were different perspectives, and a consensus was reached on some items, but not others.

At the forefront of what the committee was considering, was what the MSHCP says as it is not a document that can be amended easily. There are limitations to the MSHCP but there is also some flexibility built in. There are also legal constraints regardless of what the MSHCP says, as this is a public agency using public funds. Quoting the RCA Board Chair, what we do for one, we do for all which has become a consistent theme for the agency. The committee also looked at some opportunities for doing things better, continuing improvement and communication and advancing the MSHCP.

Off-site conservation fee credit relates to whether a landowner who is developing a project can propose conservation land outside of the development footprint, offsetting the fee obligation. If the landowner were notified through the HANS process that no conservation was needed, they could develop on 100% of their land. If the landowner had land elsewhere that would be eligible for MSHCP conservation, but not required for the project, it could be conveyed to RCA to offset fees. This arrangement is not contemplated in the MSHCP or the HANS process.

The Stakeholders Committee did not reach consensus on off-site conservation fee credits, though there was a lot of discussion on the topic. For that reason, RCA staff is not recommending any change to the current policy. Current policy is compliant with the MSHCP, and committee members did note that there were existing mechanisms for landowners to sell their properties to the RCA.

The next issue that the Board asked staff to review through the Stakeholders Committee was the timing of fee credit requests. The current policy since 2016, states that the member agencies (city or the County) need to declare if there is going to be a fee credit request when the JPR application is submitted, which is typically at the beginning of the development process. This is an important stage in the process because RCA uses this to understand how conservation is going to occur. The building industry perspective is that projects change a lot after RCA review and the request for fee credit should be allowed after the JPR is done.

The Stakeholders Committee discussed and agreed that there needed to be more acknowledgement and discussion of all the incentives a property owner has available to them through the MSHCP. While projects do change, the committee agreed that the MSHCP compliance of a project typically does not change, but when it does there is an existing tool the cities and the county have an obligation to follow. The committee also agreed that incentives offered after the project approval are not appropriate.

The recommendation today came from one of the Stakeholders Committee members, recommending that staff amend the JPR application, so that when a city is processing an application, they must note to RCA whether the landowner is seeking fee credits or if the city is offering another incentive. This way, the RCA can understand what the city is doing to compensate the property owner and determine whether a fee credit would be appropriate so there would not be any instances of double dipping. RCA staff also intends to update the training of member agencies and have outreach with the development industry to ensure everyone is the same page about incentives available to them.

Board Member Sobek thought updating the JPR application was a great idea.

M/S/C (Sobek/Johnson) to:

- 1) Direct staff to amend the Joint Project Review application to make it clearer to Member Agencies and applicants that incentives and compensation may be available for inclusion of property for MSHCP conservation, and ensure that RCA is informed of all incentives offered to property owners by Member Agencies; and**

2) Forward to the Board of Directors for final action.

Abstain: Ingram

11. BOARD OF DIRECTORS / EXECUTIVE DIRECTOR REPORTS

Anne Mayer, Executive Director, reminded the Board that Friday will be the first in-person tour of RCA-owned lands. In the recent Board Member survey, 84% of Board Members thought that touring RCA-owned lands was the best way to learn more about the MSHCP. The tour will be on Friday, April 22nd from 8:30 a.m. to 11:15 a.m. at the McElhinney Stimmel Property in Menifee off Interstate 15 at Scott Road. There is a carpool option available, the van leaves the County building at 7:45 a.m. on Friday morning. There will be a one-mile hike on generally easy open space with gently rolling hills. Jonathan Reinig, Natural Resources Manager for the Riverside County Regional Park, and Open-Space District will provide an informative tour.

12. ADJOURNMENT

There being no further business for consideration by the Executive Committee, Chair Johnson adjourned the meeting at 1:18 p.m. The next meeting of the Executive Committee is scheduled to be held on **Wednesday, May 18, 2022.**

Respectfully submitted,



Lisa Mobley
Administrative Services Manager/
Clerk of the Board