

Notice of Public Meeting San Diego River Conservancy

A public meeting of the Governing Board of
The San Diego River Conservancy
will be held Thursday,

September 6, 2012
2:00 pm – 4:00 pm

Meeting Location

County of San Diego Administration Center (CAC)
1600 Pacific Highway, Room 302
San Diego, California 92101

Tele-Conference Locations

Natural Resources Agency
1416 Ninth Street, Room 1311
Sacramento, CA 95814

Department of Finance
State Capitol, Room 1145
Sacramento, CA 95814

945 East MacArthur Street Sonoma, CA 95476

(877) 287-0283 / Pass code 606349

Contact: Michael Nelson
(619) 645-3183

Meeting Agenda

The Board may take agenda items out of order to accommodate speakers and to maintain a quorum, unless noted as time specific.

1. Roll Call

2. Approval of Minutes *(ACTION)*

Consider approval of minutes for July 12, 2012 meeting.

3. Public Comment

Any person may address the Governing Board at this time regarding any matter within the Board's authority. Presentations will be limited to three minutes for individuals and five minutes

for representatives of organizations. Submission of information in writing is encouraged. The Board is prohibited by law from taking any action on matters that are discussed that are not on the agenda; no adverse conclusions should be drawn by the Board's not responding to such matters or public comments.

4. Chairperson's and Governing Board Members' Report (INFORMATIONAL)

5. Deputy Attorney's General Report (INFORMATIONAL)

6. San Diego River Trail: 2012 Work Plan Projects (ACTION)

Proposition 84 – Construction Grant – County of San Diego

The Executive Officer and Megan Hamilton from the County of San Diego will explain a proposal to provide a \$450,000 grant to the County of San Diego for capital improvements to a segment of the San Diego River Trail: Historic Flume (Gaps Analysis 045 – 2.5 miles)

Introduction

Michael Nelson, Executive Officer

Presentation and Report:

Megan Hamilton, Department of Parks and Recreation

Recommendation: Adopt Resolution 12-03

7. San Diego River Conservancy: 5yr Capital Outlay and Financing Plan / 2012-17 (INFORMATIONAL/ACTION)

Andrew Poat will review a proposed framework for preparing SDRC's 5yr Capital Outlay and Financing Plan / 2012-17 and facilitate a discussion with the Governing Board that will guide its development.

Presentation and Report:

Andrew Poat, San Diego River Conservancy. Finance Committee Chair

Recommendation: Adopt Resolution 12-04

8. Helix Water District: Potential Settlement and Sale: 500+/- riparian acres
El Capitan Golf Club, LLC v. Helix Water District (INFORMATIONAL/ACTION)

Executive Officer will discuss possible ramifications of a settlement of this lawsuit, which involves a 500+ acre riparian leasehold traversing 3.5 miles of San Diego River northeast of Lakeside that would trigger SDRC's statutory Right of First Refusal. This discussion could include actions necessary to exercise its Right of First Refusal.

Status Report

Michael Nelson, Executive Officer

9. Tributary Canyons: Feasibility Study- Preliminary Planning – Status Report (*INFORMATIONAL/ACTION*)

The Executive Officer and consultants for the State Coastal Conservancy will review the status of activities authorized to provide design services, conduct preliminary real estate work, initiate environmental review, and permitting for the Tributary Canyons project as directed by *Resolution No: 10-01* of the SDRC Governing Board.

Presentation and Report:

Jim King, SCC Consultant

Ann Van Leer, SCC Consultant

10. Executive Officer's Report (*INFORMATIONAL / ACTION*)

The following topics may be included in the Executive Officer's Report. The Board may take action regarding any of them:

Walker Properties, Santee

Status Report

Procurement Report

As requested at the July meeting the Executive Officer will provide a brief report that summarizes actions taken subject to *Resolution 04-06: Delegation of Authority to Executive Officer*.

Proposition 84 Projects

Status Report

2013 SDRC Meeting Dates

Proposed Dates

11. Next Meeting

The next scheduled board meeting will be held Thursday November 1 2012, 2:00-4:00 pm

12. Adjournment

Accessibility

If you require a disability related modification or accommodation to attend or participate in this meeting, including auxiliary aids or services, please call Michael Nelson at 619-645-3183.

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of September 6, 2012

ITEM: 1

SUBJECT: **ROLL CALL AND INTRODUCTIONS**

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of September 6, 2012

ITEM: **2**

SUBJECT: **APPROVAL OF MINUTES (ACTION)**
The Board will consider adoption of the **July 12, 2012**
public meeting minutes.

PURPOSE: The minutes of the **July 12, 2012** Board Meetings are
attached for your review.

RECOMMENDATION: Approve minutes

SAN DIEGO RIVER CONSERVANCY (SDRC)

Minutes of July 12, 2012 Public Meeting

(Draft Minutes for Approval on September 6, 2012)

SDRC Board Chair, Ben Clay called the July 12, 2012, meeting of the San Diego River Conservancy to order at approximately 2:06 p.m.

1. Roll Call

Members Present

Brent Eidson	Mayor, City of San Diego, Designee
Dianne Jacob	Supervisor, County of San Diego, Second District
Todd Gloria	Councilmember, City of San Diego, District 3
Lorie Zapf	Councilmember, City of San Diego, District 6
Bryan Cash	Natural Resources Agency, Alternate Designee (via phone)
Ben Clay, Chair	Public at Large
Ruth Hayward	Public at Large
Andrew Poat	Public at Large
Ann Miller Haddad	Public at Large
Gary Strawn	San Diego Regional Water Quality Control Board
John Donnelly	Wildlife Conservation Board

Absent

Karen Finn	Department of Finance, Alternate Designee (via phone)
Clay Phillips	Department of Parks and Recreation, Designee

Staff Members Present

Michael Nelson	Executive Officer
Hayley Peterson	Deputy Attorney General
Julia Richards	Administrative Services Manager
Ann Van Leer	Consultant

2. Approval of Minutes

Michael Nelson advised that the Board had two sets of minutes to consider; a summary of the April 20, 2012 Workshop with the San Diego River Park Foundation, and the minutes for the regularly scheduled bi-monthly meeting on May 3, 2012.

Ann Miller Haddad made a motion to approve the April 20, 2012 Workshop minutes, which Bryan Cash seconded. The minutes were approved with eight "yes" votes and one abstention.

Bryan Cash made a motion to approve the minutes for the May 3, 2012, which was seconded by Todd Gloria. The minutes were approved with eight "yes" votes and one abstention.

3. Public Comment

Any person may address the Governing Board at this time regarding any matter within the Board's authority. Presentations will be limited to three minutes for individuals and five minutes for representatives of organizations. Submission of information in writing is encouraged. The Board is prohibited by law from taking any action on matters that are discussed that are not on the agenda; no adverse conclusions should be drawn by the Board's not responding to such matters or public comments.

Rob Hutsel, Executive Director, San Diego River Park Foundation announced that the Foundation's and the San Diego River Coalition's anniversary had been scheduled for September 27. He also thanked the County of San Diego for providing funds for a critical parcel at the El Capitan Preserve.

4. Chairperson's and Governing Board Members' Report (*INFORMATIONAL*)

No report.

5. Deputy Attorney's General Report (*INFORMATIONAL*)

No report.

Ben Clay asked that we take suggested we take Item 10 first.

10. Executive Officer's Report (*INFORMATIONAL / ACTION*)

The following topics may be included in the Executive Officer's Report. The Board may take action regarding any of them:

El Capitan Golf Club, LLC v. Helix Water District

The Executive Officer discussed possible ramifications regarding settlement negotiations of El Capitan Golf Club, LLC v. Helix Water District, a lawsuit involving an approximately 500 acre riparian leasehold traversing 3.5 miles of San Diego River, northeast of Lakeside. This discussion included SDRC's right of first refusal.

Michael Nelson said he intended to prepare a letter to the Helix Water District in consultation with the Deputy Attorney General advising the District that any settlement agreement would be subject to SDRC's statutory right of first refusal, and possibly the Government Code that governs surplus property. He also acknowledged that these discussions involved two of the Conservancy's long standing partners, the Helix Water District and Endangered Habitats Conservancy, and that his actions were not meant to disrupt their negotiations, but to discharge SDRC's statutory responsibility. He concluded that his statements were offered as an information item that would not require formal action by the Board at today's meeting.

Dianne Jacob stated that this development regarding the Water District's El Monte Valley represented an opportunity for SDRC to work with the County's Department of Parks and Recreation to consider acquiring this property. She said that she realized no action would be taken at today's meeting, but hoped it might be placed on a future agenda for further discussion and direction.

Michael Nelson said he would put the subject on the September agenda for further discussion and possible action.

Ruth Hayward remarked that Michael Beck has been working on this property for 10-12 years and wondered whether he would like to speak on the subject.

Michael Beck said as a point of policy he concurred with the Executive Officer's proposal. He cautioned the Board that it should carefully consider exercising its right of first refusal and recognize the cascading implications their decision might trigger.

Andrew Poat asked if a sale had been proposed.

Michael Nelson responded that SDRC was not a party to settlement negotiations between Helix Water District and the El Capitan Golf Club; however, he said he had discussions with Helix and they had indicated that a sale was part of their negotiations.

Andrew Poat commented that this issue makes his point regarding the need for an acquisition plan with funding projections. He feared that SDRC would get a reputation for swooping in at the last minute as negotiations are taking place.

Bryan Cash responded that as if these entities had performed their due diligence and investigations properly, they would see that SDRC has a right of first refusal and should engage us in those negotiations. It is not SDRC's fault that we are not being contacted; people are ignoring the law or are not aware of it. So it might be that the "swooping ins" are making people along the river aware that the Conservancy serves a purpose and puts people on notice that if you want to do a deal along the river you need to include the San Diego River Conservancy.

Dianne Jacob said she understands Andrew's concern about engaging and not have having the money; nonetheless, the County might be interested in this piece of property, because each year the Supervisors set aside several million dollars for habitat acquisition. While it is great to have an acquisition plan, when opportunities like this arise, priorities should change, particularly, if we can find financial partners to purchase the property. This might be a case where a partnership exists; it is too early to tell, but this organization is able to provide leverage and opportunity we might not have otherwise had with these organizations.

Michael Nelson made the point that during discussions on strategic planning great emphasis was made on opportunities and accomplishments that were made through partnerships. So, just because SDRC may not have the financial capacity to acquire 500 acres today, does not mean it doesn't have partners who could make it happen.

Ruth Hayward said she thinks the San Diego River Conservancy is a not a well known entity and that some organizations do not know it exists or what statutes SDRC can bring to bear.

City of San Diego/ Carlton Oaks Golf Course: Proposed Sale / 68 acres

Michael Nelson related that the San Diego City Council had formally approved a 40 year lease for 68 acres of public land along San Diego River at Carlton Oaks Golf Course. The City Council decided not to sell the property, but to lease the property at a market rate that will ensure that the property remains in public ownership and provides an easement for the San Diego River Trail. He noted that Councilmember Zapf is Chair of the Land Use and Housing Committee which handled this transaction and recommended the lease to the City Council for final action.

Lorie Zapf expressed that she was happy that the committee was able to work with the parties to develop a course of action the Committee, the City Council and TY Investments could support.

Ruth Hayward asked what if TY Investments decided to sell the golf course; would the lease and its terms transfer to the new owner, particularly the authorization for the development of the San Diego River Trail.

Hayley Peterson responded that she was confident that the terms of the lease would apply to the successors. She added that it was her understanding that the lease was limited to a golf course and the new owner would be limited to the operation of a golf course and not allowed to change to a new use.

Brent Eidson confirmed that Hayley's statements were accurate.

SDRC/ SCC/DGS: Transfer of Administrative Services

Michael Nelson said that the transfer of administrative services from the State Coastal Conservancy to the Department of General Services had occurred and became effective July 1, 2012, including personnel, bookkeeping and accounting for SDRC were now being performed by DGS.

Department of Transportation: Auction / Former Old Town Office

Michael Nelson said that there had been no new developments regarding the sale of the former Caltrans Office Complex in Old Town and that an auction had not been rescheduled. He added that he had also communicated with Senator Kehoe's office, which also confirmed that there was nothing new to report.

Bryan Cash said he was also unaware of any new developments.

SDRC / SDRPF: Board of Director's Workshop

Michael Nelson reminded that the minutes and meeting summary for the Governing Boards of the San Diego River Conservancy and San Diego River Park Foundation Directors Workshop, April 20, referenced a continuing conversation between both organizations and included a number of items that requiring "follow up" and further attention. He asked if the Board would like to offer any guidance as to how the "follow up" might occur.

Ben Clay asked if the Executive Officer was asking whether the Board should adopt the workshop's findings.

Michael Nelson responded that he wondered whether he and Rob Hutsel, as well as Michael Beck Chair of SDRPF and Ben Clay Chair of SDRC should get together and develop and approach to the follow up items.

Ben Clay stated that it might make sense for the two organizations to write a joint letter that demonstrates to Sacramento and elsewhere that the groups have met, worked out an agenda upon which they agree, coordinated funding priorities and projects, and announce to the public what these two organizations have and will accomplish.

Michael Beck concurred that the leadership of both organizations get together and develop a strategic partnership on issues such as an approach to Sacramento. He also noted specific local strategies might be prepared that would connect with TransNet funding on the I-5.

Ben Clay said the leaders of both organizations should develop a document for consideration by both Boards.

Michael Nelson reminded everyone later in the agenda is the Strategic Plan Update 2012-2017 and one of the recommendations in there when focusing on the San Diego River Trail that SDRC and SDRPF work on a relationship with regulatory agencies to focus on habitat as well as trail developments, which is also one of the follow up items.

Department of General Service New Office Space

Michael Nelson said he had formally requested that the Department of General Service (DGS) identify new office space with parking and conference room space for executive board and community meetings. He recalled a previous attempt to relocate SDRC to the City of San Diego's space at Navel Training Center at Liberty Station, which was denied because of a requirement to find a tenant to back fill the space SDRC presently occupies. He added that he had spoken to a DGS agent who informed him that there might be space in Mission Valley that he would investigate.

Ben Clay said he would like to consider Item 7.

7. San Diego River Trail: 2012 Work Plan Projects (*INFORMATIONAL/ACTION*)

Proposition 84 - Preliminary Planning Grant - SANDAG

The Executive Officer will explain proposal to provide \$499,000 grant to San Diego Association of Governments (SANDAG) for preliminary planning of two SDRC approved gaps: 1. Carlton Oaks Golf Course (Gaps Analysis 045 - 1.043 miles) 2. Fenton Parkway to I-15 (Gaps Analysis 19 - 0.866 miles)

Presentation and Report:

Michael Nelson, Executive Officer

Recommendation: Adopt Resolution 12-01

Michael Nelson stated that the Governing Board established an Intergovernmental Working Group (IWG) comprised of key officials from jurisdictions and stakeholders along the San Diego River to prepare a work plan, which would guide construction, management and prioritization of new segments and serve as a marketing prospectus to secure funding. He added that the *San Diego River Trail –Gaps Analysis 2010* was prepared for the State Coastal Conservancy (SCC) and SDRC by KTU+A and it provided a comprehensive identification of the major trail gaps. Moreover, the IWG ranked and presented priority projects that the Board endorsed and included them in SDRC's 2012 Work Plan. He testified that Item 7 recommends a grant to SANDAG to complete the preliminary planning for two of those Gaps: one is surrounded by the City Santee, but technically within the City of San Diego. This gap traverses Carlton Oaks Golf Course piece and connects Mast Park to West Hills Parkway near Mission Trails Regional Park. The second segment involves City owned property to Qualcomm Stadium between Fenton Parkway to I-15. He concluded by recommending the Boards favorable consideration of a \$500,000 grant to SANDAG.

Dianne Jacob acknowledged that Item 7 was very consistent with SDRC objectives and made a motion to approve Resolution 12-01, which was seconded by **Todd Gloria**.

Lorie Zapf said she wanted be certain that since both of the trail gaps were on the City of San Diego's property that the City would be represented in any discussions or deliberations on these segments.

Michael Nelson agreed adding that Robin Schifflet, as a representative of the City was with him in his initial discussions with SANDAG, was a member of the Intergovernmental Working Group and would be an integral part of the preliminary planning for these trail segments.

Lorie Zapf asked Robin if this action would negate or duplicate work the City of San Diego is doing or will need to do, particularly work on the environmental impact report (EIR).

Robin Schifflet provided assurances that this action would not be duplicative. She explained that the City's San

Diego River Pak Master Plan was a policy document for which there was a separate, programmatic EIR; and, these trail segments would require their own EIR. She said that as long as the City was a stakeholder that would be involved throughout the planning exercise, the design will be one that is consistent with the City's Master Plan.

Gary Strawn observed that a map included in the Board Packet identified the Golf Course segment as a Class I trail. He pointed out that there was also a letter in the Board Packet from equestrians. He asked whether a decision regarding a hard surface versus decomposed granite had been made.

Michael Nelson responded by clarifying that SANDAG was SDRC's consultant and as such will be asked to evaluate alternatives and consider a multipurpose path. He said that as a funder SANDAG may choose not to develop a trail as a consequence of the preliminary plans recommendations and SDRC's decision.

Ben Clay advised that Terry Rogers from the City of Santee had asked to speak.

Terry Rodgers, Special Projects Coordinator, City of Santee Community Services Department testified that the City of Santee supported Item 7 as presented by the Executive Officer to provide grant funds to SANDAG to conduct preliminary planning for multiuse trail across Carlton Oaks Golf Course. He said the City was hopeful this action might ultimately lead to completion of another mile of the San Diego River Trail and close a crucial gap between Santee's riverfront trail and Mission Trails Regional Park.

He said the City of Santee looked forward to participating in the design of the trail and based on SANDAG's success on the Bayshore Bikeway and was confident SANDAG had the capacity to complete preliminary planning for these trail segments.

Ben Clay reminded that Board that there was a motion on the floor that had been seconded and called for a roll call vote.

The motion to approve Resolution 12-01, passed unanimously.

8. SDRC: Strategic Plan Update / 2012-17 (*INFORMATIONAL/ACTION*)

Ann Miller Haddad will introduce Peter MacCracken and will review the status and summarize the latest draft of the 2012-2017 Strategic Plan Update in anticipation of formal adoption by the Governing Board.

Presentation and Report

Ann Miller Haddad, San Diego River Conservancy

Michael Nelson, Executive Officer

Peter MacCracken, APR, Strategic Communications

Recommendation: Adopt Resolution 12-02

Ann Miller Haddad summarized the actions the Board had taken on the proposed Strategic Plan Update for 2012-2017 recalling that at the last meeting Board Members provided comments on a Draft that had been developed by her, Peter MacCracken, Mike and Ann Van Leer. The Board asked that their comments be incorporated, that Mike review the revised document with the San Diego River Coalition, and engage the San Diego Regional Water Quality Control Board regarding SDRC's Water Quality Program. She reported that all of these actions had occurred and then made a motion to adopt Resolution 12-02. **Dianne Jacob** seconded her motion.

Rob Hutsel, Chairman of the San Diego River Coalition endorsed the 2012-2017 Strategic Plan Update and asked that one technical correction be made.

Michael Nelson reminded everyone that they had approved a 2-step process: The first step addressed the refinement and revision of objectives, which has just been completed. He said the second step involved the updating and revising the SDRC's Five Year Capital Outlay, Infrastructure and Financing Plan. He recalled that Andrew Poat had been asked by the Chair to take the lead on this step.

Ben Clay asked for a roll call vote, since there was a motion and a second.

The motion to adopt Resolution 12-01 passed unanimously.

6. San Diego Regional Water Quality Control Board (*INFORMATIONAL*)

Status Report: Kinder Morgan Energy Partners- Mission Valley Terminal Cleanup Project and Associated Dewatering Discharge

Presentation:

Sean McClain Engineering Geologist,
San Diego Regional Water Quality Control Board (SDRWQCB)

Ben Clay introduced the topic by explaining that as a member of the Qualcomm Stadium Advisory Board he became concerned about the status of the ongoing environmental remediation and cleanup project at Kinder Morgan Energy Partners - Mission Valley Terminal and its impact on water quality and the health of the river.

STATUS OF KINDER MORGAN ENERGY PARTNERS-MISSION VALLEY TERMINAL CLEANUP PROJECT AND ASSOCIATED DEWATERING DISCHARGE

Sean McClain gave a Power Point presentation that provided a general overview of the site, its features and the status of the cleanup and discharge. He stated that the terminal and tank farm is located north of the Qualcomm Stadium and San Diego Mission Road is the boundary that separates the terminal from the Qualcomm Stadium property. The surface water features near the site includes Murphy Canyon Creek, which runs parallel to I-15 and drains to the San Diego River which then drains into the Pacific Ocean. Ground water flow beneath the terminal flows under Qualcomm Stadium and into the San Diego River. The gasoline plume that was released from the terminal migrated towards the soil column and connected with the ground water. Since gasoline is less dense than water it floats on top and then migrated down into the stadium parking lot.

He said there were two terms to be familiar with: Primary Light Non-Aqueous Phase Liquid "LNAPL" and MTBE (methyl tertiary-butyl ether) which is a fuel additive that is very soluble in ground water and can move long distances. He reported that even though the migration has continued to the San Diego River, the sampling that has been conducted on the River has never detected a discharge, only to the groundwater.

2005 - Regional Board Addendum to the Cleanup Order for Off- Terminal Property to Kinder Morgan

Directive No. 2: (December 31, 2010) Remove gasoline constituents from subsurface soil to the extent technically practicable.

Directive No. 3: (December 31, 2013), Reduce concentrations of groundwater contamination to attain background water quality conditions.

Directive No. 4: Implement measures to prevent petroleum waste in soil and groundwater at the MVT property from migrating beyond the property limits of Mission Valley Terminal.

Other directives consisted of site assessments, groundwater and remediation monitoring requirements. Kinder Morgan is also required to continuously evaluate the progress of the remediation system and expand the system for areas not cleaning up in the times specified.

Ben Clay said that while attending meetings of the Qualcomm Advisory Board, he was led to believe the plume is under the stadium, and secondly he wonders whether there was an independent analysis of Kinder Morgan's testing.

Sean McClain said they had done an independent analysis twice, but has no data under the stadium. Though there are hundreds of wells just beyond the outline of the plumes, they are unable to install wells on the field.

The remediation that Kinder Morgan is using is soil vapor extraction coupled with ground water extraction. Gasoline in the subsurface is very volatile. If they can dewater the water around the LNAPL and expose the soil zone they can install vapor extraction wells and induce a vacuum that speeds up extraction. They were ordered to prevent any of the pollution on their property from migrating beyond their property limits; the wells on the San Diego Mission Road represent the hydraulic containment barrier, which captures all the ground water coming down on this terminal, so any contaminations at the terminal property would be captured.

Ben Clay stated that whenever there is a significant storm water flows down the creek and floods the parking lot; so he wondered whether any surface contaminants from the Kinder Morgan site reaches the river.

Sean McClain said Kinder Morgan has containment barriers around the tanks and they have vowed to shut off any flow from these barriers; moreover, they cannot release any water from around the tanks unless it has been tested. It doesn't appear that anything from the surface is making its way to the stream.

Brent Eidson stated that he knew petroleum was lighter, but questioned whether MTBE and TBA were.

Sean McClain responded that if there is downward movement for the water, MTBE and TBA will move with it. All the ground water that is pumped up to the terminal and treated with a ground water treatment system. This is designed to remove gasoline constituents in ground water and inorganic minerals that occur naturally in the aquifer (nitrates and manganese) before the water is discharged.

Ben Clay asked how it was removed from the parking lot, because he was unaware of any pipes.

Sean McClain answered that all the pipes were installed in trenches underground and lead up to the terminal. He said that the ground water is then pumped back into Murphy Canyon Creek where it then flows down to the San Diego River.

He stated that the City of San Diego is concerned that Kinder Morgan is dewatering the aquifer, but Kinder Morgan has wells down by the river and on the site; and the data consistently shows ground water is naturally discharging to the river. In 2009, US Geological Survey did numerous studies to show groundwater was up welling in this area, but didn't know why. It could be hydrostatic pressure from the mesas above or it could be a natural discharge point from ground water in the mountains; however, under the current pumping rates it doesn't appear Kinder Morgan could dewater the aquifer.

He observed that for its surface water discharge Kinder Morgan has to comply with our National Pollutant Discharge Elimination System (NPDES) permit. As you see the flow rate has increased over the years. We are up to 1.26 million gallons per day at this time.

National Pollutant Discharge Elimination System (NPDES)

1996	300,000 gpd
2005	505,000 gpd
2009	795,000 gpd
2011	TDS / Time Schedule Order

In 2011 it came to SDRWQCB's attention that Kinder Morgan was exceeding the basin plan limits for Total Dissolved Solids (TDS); so, a time schedule order was issued that required Kinder Morgan to monitor TDS impacts above stream and downstream during wet and dry season to determine if a reduction could be made for TDS. If they cannot reduce the TDS they will need to cease discharge by 2015. One map of Mission Valley shows TDS is high at all but 2 locations, yet the whole area has a TDS problem as does the ground water. Our staff is looking into and trying to find a solution for this whole area.

As of 2010, Kinder Morgan has met deadlines in the primary LNAPL area, and is still working on the western portion of the plume. The solid is almost cleaned up. They are currently working on the MTBE and TBA plume. In 2002 it was at its worst, registering at approximately 100,000 micrograms/liter. It has been reduced and is now below 10 micrograms/liter which translates as 95% of mass removed. The TBA in 2005 was at its highest, 80,000 micrograms/liter and in 2011 was reduced to a level below 100 micrograms/liter in all but two locations. The increase in flow discharge will meet the 2013 deadline and the off terminal area will be clean and complete. At that time they will have to shut pumps off, do rebound testing, and collect data for several months.

The next step for SDRWQCB staff is to deal with the terminal itself. Kinder Morgan has installed vapor wells and groundwater extraction wells on its property, which can be activated from the off terminal area to the on terminal area.

Lorie Zapf said one of the things she had heard was that this area had been a significant water source and that the water table could have been used for drinking water, but because of this cleanup it that had been eliminated. She asked if this water source can be cleaned up and used again.

Sean McClain responded that he believed it could be used today. He stated that the City of San Juan Capistrano has used ground water to address contamination from gasoline. They used a reverse osmosis system to successfully treat the groundwater.

Lorie Zapf asked if Kinder Morgan had missed any deadlines.

Sean McClain responded that the case goes back 22 years; SDRWQCB issued its first order in 1992, but as years went on, investigations in 2002 revealed how extensive the contamination was, which was followed by a number of lawsuits being filed. In 2005, SRWQCB amended the order and found it was technically feasible to initiate and complete a cleanup. Kinder Morgan has not missed any of that order's deadlines.

Lorie Zapf then asked Sean if he could address whether the massive contamination would prevent redevelopment of the site, if the Chargers moved.

Sean McClain responded that the risks have not been substantiated. Though there might be concerns about vapors that could migrate off the plume, Kinder Morgan has done extensive studies on the vapors that conclude that the vapors are not detectable.

Andrew Poat asked if these actions were regulated as a result of the Clean Water Act.

Sean McClain responded that the tank farm was regulated under Title 23, which is under the Clean Water Act.

Brent Eidson asked how deep underground the wells went.

Sean McClain responded that the wells existed at multiple depths, some are at the water table (6 ft under terminal beneath the primary NLAPL zone) and as you get closer to the river they are very shallow.

Bryan Cash asked the Chair if there were plans for Qualcomm stadium going forward and whether a new stadium would be constructed.

Ben Clay said are talks of the stadium being built downtown and reuse of the Qualcomm site.

Ruth Hayward thanked Sean for his report it was very interesting. She asked if the tank farm is the terminus of the big fuel line from Los Angeles, which provides 100% of San Diego's gasoline.

Sean McClain responded, yes, that every drop of San Diego's fuel goes through the terminal.

Ruth Hayward asked how this big plume originated before regulatory agencies began looking at it, whether it was carelessness, bad equipment, eroded pipes; and what would prevent it from happening again.

Sean McClain said the pipeline comes up Friars Road and jots right into the terminal where it reaches the manifold area, which pumps the gasoline into different tanks at the tank farm. The leak occurred for a long time at the manifold area. He said it should not occur in the future because the SDRWQCB issued an order requiring a preventative plan. Kinder Morgan now has an elaborate wiring system beneath the tanks. If gasoline leaks from the tank, it sets off an alarm. Kinder Morgan now monitors every drop of gasoline that enters the facility and claim they can almost monitor every drop that is being transferred. In addition, there is an extensive system of monitoring and capture wells.

Gary Strawn commented that one of the big concerns is that the watershed used to be dry every summer and as more water is withdrawn, filtered and pumped back into the river, it may have unintended consequences such as encouraging the growth of invasives that are very problematic.

Ben Clay thanked SDRWQCB and said this presentation was very helpful, particularly information regarding timelines, the status of the clean up and actions being taken to prevent its reoccurrence.

9. Resolution 04-06: Delegation of Authority to Executive Officer *(INFORMATIONAL/ACTION)*

The Board approved Resolution 04-06, Administrative and Operational Responsibilities: Delegation of Authority to Executive Officer on September 4, 2004. The Executive Officer will review the resolution, discuss its utilization and value, and respond to any questions or concerns raised by the Governing Board

Presentation:

Michael Nelson, Executive Officer

Michael Nelson reminded the Board questions were raised about Resolution 04-06, a prior delegation of authority approved in 2004. During the discussion of procurement and award of an environmental services contract to Land Conservation Brokerage. Supervisor Jacob inquired about the authority of the Executive Officer to make such an award. As a consequence, the Chair placed Resolution 04-06 that delegated authority for real estate, personnel, contracting and other responsibilities on this agenda for review. He said the question before the board was whether to revise or let the Resolution remain as originally approved. He added that since large procurements were infrequent, he could formally place them on SDRC's agenda for approval.

Ben Clay suggested that the Port of San Diego had a mechanism where they regularly and routinely place procurements on their dockets.

Michael Nelson expressed his willingness to adopt the Port's methodology and incorporate it as an item in his Executive Officer's Report.

Ben Clay recommended SDRC do it that way. He said it would provide greater accountability for SDRC, as a public entity and provide reassurance for appointed officials and elected officials.

Andrew Poat thanked the Chair for placing the item on the agenda and stated that he had served on commissions that reviewed policies like this every two years and would set standard grants of authority by dollar amount.

Ben Clay said he felt that disclosure on a bi-monthly basis was sufficient.

Todd Gloria commented that since Supervisors Jacob had raised this issue, he inquired whether she had provided any feedback or suggestions, because he wanted to be certain her issues were addressed.

Michael Nelson responded that as of today she had not, but he was willing to make any changes she might offer.

Michael Nelson said that their Board Book had included an invitation to attend a reception, Sunday July 15, 2012, from 4:00-6:00 p.m. at the Serra Museum. He announced that the Board for the History Center had selected a consultant to develop the new interpretative plan for the Museum. He recalled that the Board had authorized a grant for this effort and encouraged everyone to attend.

Ben Clay adjourned the meeting at 3:33 p.m.

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of September 6, 2012

ITEM: **3**

SUBJECT: **PUBLIC COMMENT**

PURPOSE: Any person may address the Governing Board at this time regarding any matter within the Board's authority. Presentations will be limited to three minutes for individuals and five minutes for representatives of organizations. Submission of information in writing is encouraged. The Board is prohibited by law from taking any action on matters that are discussed that are not on the agenda; no adverse conclusions should be drawn by the Board's not responding to such matters or public comments.

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of September 6, 2012

ITEM: **4**

SUBJECT: **CHAIRPERSON'S AND GOVERNING BOARD
MEMBERS' REPORTS (*INFORMATIONAL*)**

PURPOSE: These items are for Board discussion only and the Board
will take no formal action.

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of September 6, 2012

ITEM: **5**

SUBJECT: **DEPUTY ATTORNEY'S GENERAL REPORT
(INFORMATIONAL)**

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of September 6, 2012

ITEM: 6

SUBJECT: **SAN DIEGO RIVER TRAIL: 2012 WORK PLAN
PROJECTS (ACTION)**

**PROPOSITION 84 – CONSTRUCTION GRANT –
COUNTY OF SAN DIEGO**

The Executive Officer and Megan Hamilton from the County of San Diego will explain a proposal to provide a \$450,000 grant to the County of San Diego for capital improvements to a segment of the San Diego River Trail: Historic Flume (Gaps Analysis 045 – 2.5 miles)

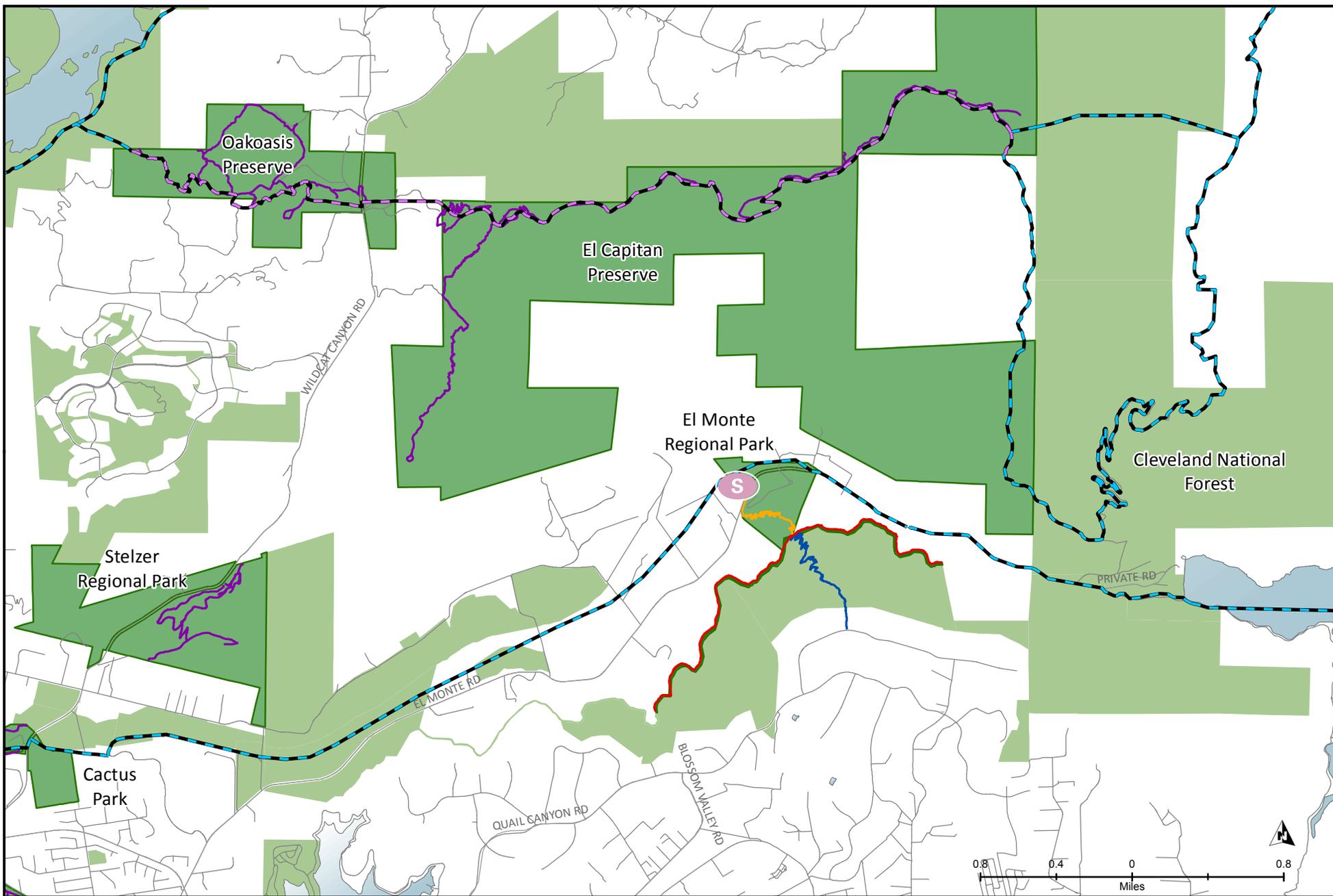
Introduction

Michael Nelson, Executive Officer

Presentation and Report:

Megan Hamilton, Department of Parks and Recreation

Recommendation: Adopt Resolution 12-03



- County Owned and Managed Land
- Parks and Open Space
- S Staging Area
- Existing Regional Trail
- Proposed Regional Trail
- Existing County Park Trails
- Proposed Flume Trail
- El Monte Park Trail
- Valley View Community Trail

Projection: State Plane, Zone VI, Datum NAD 83. Units Feet.
 Parks File:\12_08_FlumeRegional.mxd County of San Diego, LUEG GIS, 6/12/12

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EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of September 6, 2012

ITEM: 6

SUBJECT: **AUTHORIZING FUNDING FOR CAPITAL IMPROVEMENTS TO THE FLUME TRAIL SEGMENT OF THE SAN DIEGO RIVER TRAIL IN THE COUNTY OF SAN DIEGO.**

PURPOSE: The Board may consider adoption of Resolution 12-03 authorizing the San Diego River Conservancy (SDRC) to request that a \$450,000 grant from the State Coastal Conservancy (SCC) be provided to the County of San Diego to fund capital improvements for a segment of the San Diego River Trail (SDRT) with funding derived from Proposition 84 funds allocated to the SCC for projects authorized by SDRC.

STRATEGIC PLAN CONSISTENCY: This item will help to implement Program 2: Recreation & Education, as well as, SDRC and San Diego River Coalition Annual Work Plans.

BACKGROUND: **Project Background:** At the July 9, 2009 meeting the Governing Board approved a motion to establish an Intergovernmental Working Group (IWG) comprised of key officials from jurisdictions and stakeholders along the River to prepare a work plan that would acknowledge each jurisdiction's commitment to the trail, guide the construction, management and prioritization of new segments, and to serve as a marketing prospectus to secure funding. In addition the ***San Diego River Trail –Gaps Analysis 2010*** was prepared for the State Coastal Conservancy (SCC) and San Diego River Conservancy (SDRC) by KTU+A, which provided a comprehensive identification and mapping for major gaps, as well as, projects planned, proposed or constructed. The IWG in May 2011 ranked and presented priority projects and the Board endorsed them as capital priorities in July 2011.

At the November 3, 2011 meeting of SDRC, the governing board gave conceptual approval for a grant to the County of San Diego to construct a 2.5 mile segment of the multi-use Historic Flume Trail, identified as segments 60A and 63 in the San Diego River Trail Gaps Analysis. The cost estimate for the project at the time was \$485,000.

The SDRC board acknowledged the County of San Diego's financial investments in the project, particularly expenditures to acquire the alignment

and develop preliminary plans for the trail. It expressed its intention to assist the County by providing funding to complete the development of this trail segment.

During its deliberations, it was stated that SDRC funding for the grant is included in the State Coastal Conservancy's (SCC) allocation of Proposition 84 funds; and, as a consequence, would require formal approval by the SCC governing board. SDRC staff further advised that the SCC would require compliance with the California Environmental Quality Act (CEQA) before considering final approval of the grant for the project.

The SDRC board unanimously agreed to consider a formal resolution to SCC recommending funding for the project, once the SDRC board receives a report outlining final project costs, fiscal impacts, and evidence of CEQA compliance.

Project Goals: The proposed Flume Trail project will add 2.5 miles to the planned San Diego River Trail as envisioned by the San Diego River Conservancy (SDRC), a trail that will ultimately connect El Capitan Reservoir in the east to the coast. Specifically, the proposed Flume Trail project will complete segment 60A and a portion of segment 63 of the San Diego River Trail as identified in the San Diego River Trail Gaps Analysis (2010). The Flume Trail will be accessed via the trailhead at the recently completed staging area and trail at El Monte County Park. The in and back trail route combined mileage will total 4.5 miles.

Project Description: The project involves the development of an approximately two and a half mile non-motorized, multi-use trail for hiking, biking, and equestrian users primarily within the existing ten foot wide bench cut of the County owned parcel of the historic flume alignment. The trail will cross several drainages. In order to minimize environmental impacts and/or avoid jurisdictional resources small portions of the trail meander to an existing County owned 20-foot-wide trail easement adjacent to the southern boundary of the historic flume alignment parcel. Interpretive signage to provide information to the public about the historic flume will be installed. Other trail elements may include fencing.

Project Discussion: The County Department of Parks and Recreation has completed the preparation of environmental documents and issued a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) on July 26 2012 and is circulating the MND in accordance with the California Environmental Quality Act (CEQA). In addition, the Department provided detailed budgets and timelines for the project, which follow this report. You will find below summaries of these documents.

In-kind Services

Parcel acquisition	\$19,000	11/17/ 2010
Acquisition costs*	\$50,655	11/17, 2010
Aerial GPS survey	\$26,580	7/ 20/ 2012

CEQA studies	\$56,100	7/17 /2012
CEQA staff costs	\$3,720	In process
Permitting	\$1,673	In process
Permitting staff costs	\$992	In process

TOTAL \$158,720
(Includes but not limited to title reports, staff costs, escrow)

Timelines:

Complete Final Design	11/30/2011
Complete CEQA	3/31/2012
Obtain Permits	4/30/2012

Complete environmental training, surveys, monitoring	1/7/2013
Complete habitat mitigation	1/7/2013
Clear, grub trail	3/7/2013
Design and install signs	4/7/2013

**SUPPORTING
DOCUMENTS:**

Executive Officer's Summary Report
Preliminary Budgets and CEQA Documents
Resolution 12-03

PART B: Budget, Timeline, and Additional Questions

Preliminary Budget

In the budget matrix below, list the major tasks of the proposed project and indicate the estimated cost of each. These tasks should correlate with the activities you will list on the following page under "Timeline" (in some cases, several tasks listed here may logically be grouped as one activity in the timeline matrix). Show the source of funding for each task. A simplified example is provided.

Simplified Sample Budget

Task Number	Task	Applicant's Funding	Coastal Conservancy	Other Funds	Total Cost
1	Complete Final Designs	\$20,000	\$30,000	\$7,000	\$57,000
2	Complete CEQA	\$5,000			\$5,000
3	Obtain Permits	\$5,000			\$5,000
4	Develop project sign plan and install signs				
TOTAL		\$30,000	\$30,000	\$7,000	\$67,000

Preliminary Budget

Task Number	Task	Applicant's Funding	Coastal Conservancy	Other Funds	Total Cost
1	Acquire parcel	\$69,655			
2	Aerial survey	\$26,580			
3	Complete environmental studies	\$56,100			
4	Complete IS/MND	\$3,720			
5	Obtain permits	\$2,665			
6	Complete environmental training, surveys, monitoring		\$4,500		
7	Complete habitat mitigation		\$110,500		
8	Clear, grub trail		\$205,000		
9	Design and install signs		\$75,000		
10	Project Management		\$55,000		
TOTAL		\$158,720	\$450,000		

Timeline

Please list (1) all significant and pertinent project milestones related to the project for which funds are being requested (for example, California Environmental Quality Act compliance, obtaining of permits, appraisal preparation and other land acquisition documents, commencement of construction, and project completion), (2) expected dates for reaching or completing those steps, and (3) any factors that could influence the timely implementation of the project.

Simplified Sample Timeline

ACTIVITY	COMPLETION DATE	FACTORS THAT COULD INFLUENCE TIMELY IMPLEMENTATION
<i>Complete Final Design</i>	<i>11/30/2011</i>	<i>Lack of agreement</i>
<i>Complete CEQA</i>	<i>3/31/2012</i>	<i>Unanticipated impacts</i>
<i>Obtain Permits</i>	<i>4/30/2012</i>	<i>Delays in issuing of permits</i>

Timeline

ACTIVITY	COMPLETION DATE	FACTORS THAT COULD INFLUENCE TIMELY IMPLEMENTATION
Complete environmental training, surveys, monitoring	1/7/2013	None
Complete habitat mitigation	1/7/2013	Habitat mitigation availability
Clear, grub trail	3/7/2013	Encountering cultural resources
Design and install signs	4/7/2013	None
	Click here to enter a date.	
	Click here to enter a date.	
	Click here to enter a date.	

Resolution No: 12-03

RESOLUTION OF THE GOVERNING BOARD OF THE SAN DIEGO RIVER CONSERVANCY

**Approval of Use of Funds from
The Safe Drinking Water, Water Quality and Supply, Flood
Control, River and Coastal Protection Bond Act of 2006
(Proposition 84)**

WHEREAS, the Legislature and Governor of the State of California have provided funds for the program shown above to the California State Coastal Conservancy for projects approved by the San Diego River Conservancy; and

WHEREAS, the Governing Board of the San Diego River Conservancy finds the expenditure of funds for developing the San Diego River Trail consistent with its enabling statute, which directs the Conservancy: "to provide recreation opportunities, open space,...and lands for educational uses within the area"; and

WHEREAS, the Governing Board of the San Diego River Conservancy has endorsed funding a segment of the San Diego River Trail described as "Flume Trail" in the County of San Diego; and

WHEREAS, the County of San Diego will invest will invest \$158,720 in the planning, acquisition, and permitting of the Flume Trail and has completed the preparation of environmental documents and issued a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) on July 26 2012; and

WHEREAS, the Flume Trail is consistent with Program 2: Recreation & Education and Program of the Conservancy's Strategic Plan, the San Diego River Park Conceptual Plan, the City of San Diego's Draft San Diego River Park Master Plan, and the annual work plans of the San Diego River Conservancy and the San Diego River Coalition; and

WHEREAS, the Governing Board of the San Diego River Conservancy has reviewed the San Diego River Trail Gaps Analysis and approved as funding priorities trail segments and gaps recommended by the jurisdictions to further the completion of the San Diego River Trail; and

NOW, THEREFORE, BE IT RESOLVED that the San Diego River Conservancy's Governing Board:

1. Authorizes the Executive Officer to request that the State Coastal Conservancy use Proposition 84 funds appropriated for projects approved by the San Diego River Conservancy to provide a \$450,000 grant to the County of San Diego to make capital improvements to the Flume Trail segment of the San Diego River Trail;
2. Supports San Diego County's use of the funds to develop an approximately two and a half mile non-motorized, multi-use trail for hiking, biking, and equestrian users primarily within the existing ten foot wide bench cut of the County owned parcel of the historic flume alignment; and,
3. Appoints the Executive Officer, or his designee, as agent to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, and payment requests and so on, which may be necessary for the completion of the aforementioned project(s).

Approved and adopted the 6th day of September, 2012. I, the undersigned, hereby certify that the foregoing Resolution Number 12-03 was duly adopted by the San Diego River Conservancy's Governing Board.

Roll Call Vote:

Ayes: _____

Nos: _____

Absent _____

Michael J. Nelson
Executive Officer

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of September 6, 2012

ITEM: 7

SUBJECT: **SAN DIEGO RIVER CONSERVANCY: 5YR CAPITAL
OUTLAY AND FINANCING PLAN / 2012-17
(INFORMATIONAL/ACTION)**

Andrew Poat will review a proposed framework for preparing SDRC's 5yr Capital Outlay and Financing Plan / 2012-17 and facilitate a discussion with the Governing Board that will guide its development.

Presentation and Report:

Andrew Poat, San Diego River Conservancy, Finance Committee
Chair

Recommendation: Adopt Resolution 12-04



San Diego River Conservancy

Financial Plan Development Strategy
September 6, 2012

[Overview]

- 2011: Strategic plan update strategy adopted
 - Review existing Strategic Plan Project priorities
 - Adopt new financial plan
- Strategic plan update adopted July, 2012
- Today's focus: Finance Plan development
 - Generation 1: September 2012
 - Overview & direction
 - Launch phase 1
 - Generation 2: November 2012
 - Phase 1 options
 - Phase 2 proposal

Generation one: Fulfill DOF Capital funding exercise

- Use existing authorization for Conservation Visioning Study to produce Capital Budget (cost estimates) for updated Strategic Plan
- Expand to include "Tool Box" of financial opportunities and techniques tailored to the jurisdictions of San Diego Watershed and the SRRC updated objectives

[Phase 2:]

- Identify for Conservancy
 - “Tool box” of funding strategies
 - Implementation requirements (e.g. resources)
 - Preferred methods to coordinate with trusted partners
 - Time line for next steps
- Identify for each project:
 - Project description
 - Funding options
 - Preferred strategy & prerequisites to qualify
 - Project Champion & support organizations
 - Timeline

Motion: Authorize Phase 1 Finance Plan Activities

- Authorize Executive Director to use existing authority for Conservation Visioning Study to produce:
 - Capital Budget for updated Strategic Plan (cost estimates)
 - Expand to include "Tool Box" of financial opportunities and techniques tailored to the jurisdictions of San Diego Watershed and the SRRC updated objectives
- Finance Committee to develop framework for Second Generation Report
- Both reports to Conservancy in November, 2012

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of September 6, 2012

ITEM: **8**

SUBJECT: **HELIX WATER DISTRICT: POTENTIAL SETTLEMENT
AND SALE: 500+/- RIPARIAN ACRES
(INFORMATIONAL/ACTION)**

El Capitan Golf Club, LLC v. Helix Water District

Executive Officer will discuss possible ramifications of a settlement of this lawsuit, which involves a 500+- acre riparian leasehold traversing 3.5 miles of San Diego River northeast of Lakeside that would trigger SDRC's statutory Right of First Refusal. This discussion could include actions necessary to exercise its Right of First Refusal.

Status Report

Michael Nelson, Executive Officer



July 17, 2012

Carlos Lugo
General Manager
Helix Water District
7811 University Avenue
La Mesa, CA 91942

Dear Carlos,

I appreciate your willingness to meet with me in June to discuss the San Diego River Conservancy and its interest in the disposition of Helix Water District's 500 +/- acre El Monte Valley property, northeast of Lakeside. During this meeting you confirmed that the sale of this property is a subject of settlement discussions regarding *El Capitan Golf Club, LLC v. Helix Water District*. The purpose of this correspondence is to inform Helix of certain statutory issues and questions regarding a potential sale of the El Monte Valley property that may be included in a settlement agreement.

The Conservancy is an independent state agency, and successor to the Natural Resources Agency. It was established by the San Diego River Conservancy Act in 2002 to restore a riparian corridor along the length of San Diego River and build a stream valley park.

Interestingly, the Act's first statutory purpose for which the Conservancy was created includes acquisition of land:

Public Resources Code, Sec.32633

(a) To acquire and manage public lands within the San Diego River area, and to provide recreational opportunities, open space, wildlife habitat and species restoration and protection, wetland protection and restoration, protection of historical and cultural resources, and protection, maintenance and improvements of the quality of the waters in the San Diego River and its watershed, its tributaries

(b) To provide for the public's enjoyment, and to enhance the recreational and educational experience and historic interpretation on public lands in the territory in a manner consistent with the protection of land and natural resources, as well as economic resources, in the area.

SDRC wishes to inform you that that it has a statutorily mandated first right of refusal:

Public Resources Code, Sec.32646

Notwithstanding any other provision of law, the conservancy has the first right of refusal to acquire any public lands that are suitable for park and open space within the conservancy's jurisdiction when those lands become available. The conservancy may not exercise the power of eminent domain.

Because the property is within the Conservancy's statutory jurisdiction found in Public Resources Code section 32632, the Conservancy seeks an acknowledgement and confirmation of its right to receive formal notification of the disposal of land of such notable environmental value and the opportunity as a public agency to consider its purchase.

In addition, Government Code Section 54220 requires local agencies to provide property information to other local agencies responsible for low/moderate income housing, parks, open space, schools, transit development and enterprise zones when making determinations about surplus property and possible disposition. I am interested in Helix's views on whether this section applies to the property and whether Helix intends to provide the Conservancy with notice under its provisions as an interested and potentially responsible agency.

The Governing Board of the San Diego River Conservancy is aware of this correspondence and will review your response and any actions it may consider taking at its next meeting on September 6, 2011. The Conservancy has established a remarkable record of achievement with federal, state and local governments, as well as nongovernmental organizations to establish restoration, recreation and land conservation projects and programs along the San Diego River. Helix has been a long standing partner of SDRC. I look forward to your response, as well as, an opportunity to address any issues it may raise.

Sincerely,



Michael Nelson
Executive Officer
1350 Front Street, Suite 3024
San Diego, CA 92101



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July 24, 2012

Michael Nelson
Executive Director
San Diego River Conservancy
1350 Front St. Suite 3024
San Diego, CA 92101

Hayley Peterson
Deputy Attorney General
Office of the Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101
Fax: (619) 645-2012

Re: San Diego River Conservancy Agenda Item for July 12, 2012

Dear Mr. Nelson and Ms. Peterson:

We wanted to provide you this background information with regard to your July 12th agenda.

Our firm serves as General Counsel to Helix Water District, the owner of the acreage referenced on the Conservancy's July 12, 2012 agenda and the subject of *El Capitan Golf Club, LLC v. Helix Water District* and the subject of the Conservancy's letter to Helix dated July 17, 2012. This dispute, relating to a 63-year leasehold and potential mining and reclamation of the property, dates back most of a decade and involves an assertion by the Plaintiff of damages in excess of \$100 million. Although Helix strenuously disputes these allegations, the parties are in active negotiations toward a settlement of the lawsuit. One vehicle for settlement under serious consideration is an option to purchase the property in exchange for a release of all claims, extinguishment of the lease, and payment of the current fair market value of the property.

This is to assure the Conservancy that Helix's consideration of this settlement will take into account the Conservancy's statutory right under Public Resources Code Section 32646, which we expect would be handled concurrently with the Conservancy's opportunities under Government Code Section 54220. However, Helix's position will be that the consideration for any purchase of the property will necessarily be predicated upon a full resolution of the lawsuit, in addition to any monetary consideration paid for the purchase. (*Hartzheim v. Valley Land & Cattle Co.*, which provides that "the holder of a right of first refusal...has a form of option to



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ATTORNEYS AT LAW

Michael Nelson
Hayley Peterson
July 24, 2012
Page 2

purchase...on the same terms and conditions as the prospective purchaser's offer." ((2007) 153 Cal. App. 4th at 394 citing *McCulloch v. M & C Beauty Colleges, Inc.* (1987) 194 Cal. App. 3d 1338.) We believe that the value of the release of claims at the time of settlement could be monetized at the time of settlement for consideration by the Conservancy in addition to any monetary consideration due. We intend to incorporate this notion into any settlement conversations we have with the Plaintiffs.

Helix will, of course, keep the Conservancy apprised of any progress on disposition of the property. We expect that through pursuit of any right of first refusal if a settlement and option to purchase are finalized and/or the Conservancy's participation in its traditional stewardship role through any permitting or entitlement processes, the Conservancy will have the full opportunity to participate in the ultimate disposition and use of this property.

Yours truly,

A handwritten signature in black ink, appearing to read 'Scott C. Smith', written over a horizontal line.

Scott C. Smith
of BEST BEST & KRIEGER LLP
General Counsel
Helix Water District

SCS:jau

cc: Vince Bartolotta
Bill Adams

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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August 29, 2012

Scott Smith, Esq.
Best, Best & Krieger, LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614

VIA EMAIL & U.S. MAIL

RE: San Diego River Conservancy's Statutory Right of First Refusal

Dear Mr. Smith:

Our client, the San Diego River Conservancy and its executive director Michael Nelson, forwarded to me your letter dated July 24, 2012. The Conservancy appreciates Helix Water District's assurance that its settlement consideration takes into account the Conservancy's statutory right of first refusal and that it will keep the Conservancy informed about the property's disposition progress. The Conservancy takes this to mean that it will have the opportunity to exercise its right of first refusal before the parties finalize the settlement. Please let us know immediately if you disagree.

We do not agree with Helix's position that the Conservancy must exercise its statutory right on matching terms and conditions as El Capitan Golf Club's offer, which would not only purchase the property but also settle damages claims. The Conservancy cannot spend State funds settling litigation to which it is not a party.

Also, we are unaware of any authority for the proposition that the Conservancy's statutory right under Public Resources Code section 32646 should be handled concurrently with Government Code section 54220. In any event, the Conservancy's enabling statute requires it to select and acquire real property in the name of the state under the Property Acquisition Law

Scott Smith
August 29, 2012
Page 2

(Gov. Code § 15850 et seq.), which is separate and distinct from the Surplus Land Law (Gov. Code § 54220 et seq.).

Sincerely,

Rosana Miramontes

ROSANA MIRAMONTES
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

cc: Michael Nelson, San Diego River Conservancy

LA2012306261
Document in ProLaw

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of September 6, 2012

ITEM: 9

SUBJECT: **TRIBUTARY CANYONS: FEASIBILITY STUDY-
PRELIMINARY PLANNING – STATUS REPORT
(INFORMATIONAL/ACTION)**

The Executive Officer and consultants for the State Coastal Conservancy will review the status of activities authorized to provide design services, conduct preliminary real estate work, initiate environmental review, and permitting for the Tributary Canyons project as directed by *Resolution No: 10-01* of the SDRC Governing Board.

Presentation and Report:
Jim King, SCC Consultant
Ann Van Leer, SCC Consultant

SAN DIEGO RIVER TRIBUTARY CANYONS PROJECT REPORT

San Diego River Conservancy Governing Board Meeting, - September 6, 2012

On May 6, 2010 the San Diego River Conservancy reviewed a feasibility report and planning for the San Diego River Tributary Canyons Project and authorized \$220,000 for design services, preliminary real estate work, environmental review, permitting and associated studies needed to implement the project in eastern Mission Valley in the City of San Diego (SD River Tributary Canyons Project Feasibility Report, Foothills Associates, April 2010). Subsequent work involving the central project element - the construction of trails linking the communities of Serra Mesa and Normal Heights to the San Diego River – has achieved important milestones required for implementation.

The State Coastal Conservancy reviewed the progress of the project at its August 10, 2010 meeting and approved a parallel authorization to proceed with work. The project is being pursued jointly by the two state conservancies in accord with the Budget Act of 2008 as it pertains to Proposition 84 funding for the San Diego River watershed (Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006).

In October 2010 Land Conservation Brokerage Inc. was retained to provide the real estate and initial environmental services required to advance the project. Landowners along recommended trail alignments were engaged regarding right-of-way issues and the cultural and biological surveys required to proceed with trail design and environmental review were completed. These included review of archeological survey data, identification of rare plants and delineation of habitat types and nesting surveys for listed threatened and endangered birds. Work was successfully completed in June 2012 lending greater clarity for the design work that is to follow.

In summer 2011, an Interagency Agreement was developed between the Coastal Conservancy and California State Parks for trail design work in the San Diego River watershed. A reconnaissance of the Tributary Canyons project area was conducted in November 2011. After completing cultural, environmental and real estate work in July 2012 information was conveyed to State Parks, a detailed work plan for trail design and layout services was executed and field work scheduled for early September. State Parks will develop maps, designs and GIS representations for each trail segment assessed as well as work logs detailing the anticipated construction process and cost estimates for implementation. Plans will address the Ruffin/Sandroch Canyon and Kennmore Terrace/I-805 trail corridors identified in the Project Feasibility Report and the Preliminary Planning Report prepared for the conservancies by Foothill Associates.

The substantial data set now organized for the project is intended to inform, strengthen and expedite the design and environmental review work which follows and, with the designs, provide clear and detailed representations of the project for public review and decision-making. The work proceeds within budget with a schedule for completion in spring 2013. Staff then expects to present the board with a recommended action for implementing the project that includes California Environmental Quality Act certification, public and private landowner agreements, construction financing, organization and management, and project operation and maintenance.

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of September 6, 2012

ITEM: **10**

SUBJECT: **EXECUTIVE OFFICER'S REPORT (*INFORMATIONAL / ACTION*)**

The following topics may be included in the Executive Officer's Report. The Board may take action regarding any of them:

- **Walker Properties, Santee**
Status Report
- **Procurement Report**
As requested at the July meeting the Executive Officer will provide a brief report that summarizes actions taken subject to Resolution 04-06: Delegation of Authority to Executive Officer.
- **Proposition 84 Projects**
Status Report
- **2013 SDRC Meeting Dates**
Proposed Dates

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of September 6, 2012

ITEM: **10**

SUBJECT: **EXECUTIVE OFFICER'S PROCUREMENT REPORT**

- 1) Blanket Purchase Order 12SDR001 with Federal Express through June 30, 2013/ amount \$720.00 for overnight delivery
- 2) Blanket Purchase Order 12SDR002 with FedEx Office through June 30, 2013/ amount \$1,300.00 for print/copy service
- 3) Blanket Purchase Order 12SDR003 with American Express through June 30, 2013/ amount \$580.00 for GoToMeeting.com
- 4) Blanket Purchase Order 12SDR004 with AT&T through June 30, 2013/ amount \$1,300.00 for telephone services
- 5) Blanket Purchase Order 12SDR005 with AT&T through June 30, 2013/ amount \$720.00 for telephone services
- 6) Blanket Purchase Order 12SDR006 with AT&T/CALNET2 through June 30, 2013/ amount \$900.00 for overnight delivery
- 7) Blanket Purchase Order 12SDR007 with Signa Digital Solutions through June 30, 2013/ amount \$996.00 for telephone services
- 8) Purchase Order 12SDRC008 with Best Office Supply/ amount \$30.77 for office supplies



SAN DIEGO RIVER CONSERVANCY 2013 / Proposed Meeting Dates

This list of proposed dates is for the first Thursday of the month and continues a bi-monthly board meeting schedule for 2013. The asterisk * indicates that there was a holiday during the first week of those months, so those meetings were scheduled for the 2nd week of the month.

Thursday	January 10*	2:00 - 4:00 pm
Thursday	March 7	2:00 - 4:00 pm
Thursday	May 2	2:00 - 4:00 pm
Thursday	July 11	2:00 - 4:00 pm
Thursday	September 12*	2:00 - 4:00 pm
Thursday	November 7	2:00 - 4:00 pm

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of September 6, 2012

ITEM: 11

SUBJECT: **NEXT MEETING**

The next regularly scheduled board meeting is scheduled for November 1, 2012 from 2:00 to 4:00 p.m.

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of September 6, 2012

ITEM: 12

SUBJECT: **ADJOURNMENT**