



Contra
Costa
County

To: Board of Supervisors
From: Sharon L. Anderson, County Counsel
Date: December 19, 2017

Subject: Joint Defense Agreement Re: WaterFix Project State Wat. Res. Control Bd. Proceeding

RECOMMENDATION(S):

APPROVE and AUTHORIZE the County Counsel, or designee, to execute, on behalf of the County and the Contra Costa County Water Agency, a joint defense agreement with Solano County, in connection with their shared protest filed in the State Water Resources Control Board's California WaterFix Project proceeding.

FISCAL IMPACT:

The agreement provides that each of the parties will pay for one half of the cost of the shared expert's work on behalf of both parties. The parties will be responsible for paying their own attorneys' fees and costs. (100% Water Agency Funds)

BACKGROUND:

This board order seeks authorization for the County Counsel, or designee, to execute an agreement to protect the privileged nature of communications and attorney work product

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY

☐ RECOMMENDATION OF BOARD

ADMINISTRATOR

COMMITTEE

Action of Board On: **12/19/2017** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 19, 2017

David Twa, County Administrator and Clerk of the Board of Supervisors

Contact: Stephen M. Siptroth,
(925) 335-1817

By: Stephanie Mello, Deputy

BACKGROUND: (CONT'D)

while the County and Contra Costa County Water Agency cooperate with Solano County in the WaterFix project water rights proceeding before the State Water Resources Control Board.

The Contra Costa parties and Solano County filed protests against the Department of Water Resources' and Bureau of Reclamation's joint water rights change petition related to the California WaterFix project. The Contra Costa parties and Solano County have shared interests in the proceeding, and the parties protested the WaterFix water rights change petition on similar grounds. Part 2 of the State Board proceeding begins in January 2018. In Part 2 of the proceeding, the parties will present their joint case-in-chief in opposition to the change petition. The parties will be relying on the same expert witness, who will present expert testimony on behalf of the Contra Costa parties and Solano County.

The joint defense agreement will be executed on behalf of the two counties and the water agency. The agreement authorizes the parties to share privileged communications and documents to advance their common interests in the proceeding. The agreement also confirms that the costs for the expert's work on behalf of both parties will be split evenly between the two parties. Costs for work the expert performs exclusively for the benefit of one party will be paid by that party. Both parties have separately contracted with the expert for his services.

CONSEQUENCE OF NEGATIVE ACTION:

There would be no agreement regarding the sharing of privileged documents and communications in this proceeding.