



**Contra
Costa
County**

To: Board of Supervisors
From: Mary Ann Mason, County Counsel
Date: October 19, 2021

Subject: Amendment to Joint Defense Agreement – Firebaugh Canal Water District, et al. v. U.S. Department of Interior, Bureau of Reclamation, et al.

RECOMMENDATION(S):

APPROVE and AUTHORIZE the County Counsel, or designee, to execute, on behalf of the County and the Contra Costa County Water Agency, an amendment to the joint defense agreement with Natural Resources Defense Council and The Bay Institute, effective September 1, 2021, to increase the payment limit by \$30,000, to a new payment limit of \$80,000, for shared legal and advocacy expenses related to *Firebaugh Canal Water District, et al. v. U.S. Department of Interior, Bureau of Reclamation, et al.*, and related cases.

FISCAL IMPACT:

The Water Agency will pay an additional \$30,000, for a total of \$80,000 in funding, for Bay Institute's legal and advocacy work related to the drainage cases through September 30, 2023.

BACKGROUND:

This relates to additional funding that the Contra Costa County Water Agency will provide to The Bay Institute of San Francisco for ongoing legal and advocacy work that Bay Institute is performing on behalf of itself and Contra Costa County, the Water Agency, and

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **10/19/2021** ☒ 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: October 19, 2021

Monica Nino, County Administrator and Clerk of the Board of Supervisors

Contact: Stephen M. Siptroth, Deputy
County Counsel, (925) 655-2200

By: June McHuen, Deputy

the Natural Resources Defense Council, in opposition to a proposed settlement between Westlands Water District and the Bureau of Reclamation in the case entitled

BACKGROUND: (CONT'D)

Firebaugh Canal Water District, et al. v. U.S. Department of Interior, Bureau of Reclamation, et al. (Ninth Circuit Court of Appeals Case No. 11-17715) ("*Firebaugh* appeal").

In 2012, Contra Costa County, the Water Agency, NRDC, and Bay Institute entered into a joint defense agreement related to the *Firebaugh* appeal. The Ninth Circuit Court of Appeals issued a decision in the *Firebaugh* appeal in favor of Reclamation. The United States District Court, Eastern District of California has retained jurisdiction of the underlying actions to enforce an order requiring Reclamation to provide drainage to lands within the San Luis Unit of the Central Valley Project, including lands within Westlands. Westlands, NRDC, Bay Institute, the County, and the Water Agency are intervenors in those cases, entitled *Firebaugh Canal Water District, et al. v. U.S. Department of Interior, Bureau of Reclamation, et al.*, Eastern District of California Case Nos. CV-F-88-634-LJO/DLB and CV-F-91-048-LJO/DLB. Westlands also has filed two other lawsuits against Reclamation related to drainage.

Reclamation and Westlands have negotiated a settlement of the two drainage cases and the two other drainage-related lawsuits. The proposed settlement would relieve Reclamation of its drainage obligations under the San Luis Act, a federal law, and would require Westlands to be responsible for agricultural drainage within its service area. This could adversely impact the water quality of the San Joaquin River and the Sacramento-San Joaquin Delta. The proposed settlement depends on Congress amending the San Luis Act.

As intervenors in the drainage cases, the parties to the joint defense agreement have a shared interest in advocating against the proposed settlement and amendment to the San Luis Act. The parties have coordinated their advocacy activities by having Bay Institute litigate and advocate on their behalf. To date, the Water Agency has paid \$50,000 for legal and advocacy work related to the drainage cases and the proposed settlement.

Because Bay Institute's legal and advocacy work is expected to remain ongoing for the foreseeable future, Water Agency staff recommend that the Board authorize the County Counsel, or designee, to negotiate and execute an amendment to the joint defense agreement, to provide Bay Institute up to \$30,000 in additional funding, for a total Water Agency funding contribution of \$80,000, for legal and advocacy expenses Bay Institute incurs through September 30, 2023. Any funds not actually used by Bay Institute will be returned to the Water Agency.

CONSEQUENCE OF NEGATIVE ACTION:

The County and Water Agency would need to pay for separate legal representation and legislative advocacy related to the drainage cases at a cost that could exceed the additional \$30,000 of funding that will be paid to Bay Institute for that work.