



bay restoration commission

STEWARDS OF SANTA MONICA BAY

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August 11, 2011

Agenda Item #9

To: Governing Board, SMBRC

From: Scott Valor, Director of Government Affairs

Subject: Potential Amendments to the Memorandum of Understanding (MOU)

Action Requested of the Governing Board:

- Discussion item only

Background

The SMBRC MOU describes the governance structures and processes of the SMBRC including the Governing Board, Technical Advisory Committee and Bay Watershed Council. The MOU was developed pursuant to the requirement of California Public Resources Code sections 30988-30988.3, which established the SMBRC as a non-regulatory state entity (see specifically Cal. Pub. Res. Code section 30988.2(b)). The original MOU was adopted and signed in 2003 by the California Resources Agency Secretary, Cal EPA Secretary, and Santa Monica Bay Watershed Council Chair. It was amended three times, in 2005, 2007, and 2009, by majority vote of the Governing Board. These amendments added a member to the Governing Board, two members to the Bay Watershed Council, and revamped the structure of the Technical Advisory Committee. No additional amendments have been considered since then.

In order to maintain consistency with Section 320 of the Federal Clean Water Act, and thus continue to be an eligible participant in the National Estuary Program (NEP), three basic elements of the SMBRC structure must remain—a Governing Body, a Citizen Advisory Committee, and a Technical Advisory Committee. While these broad requirements may not be removed, *how* the organization is structured is viewed by US EPA as a *locally-driven* activity to be considered by the local stakeholders. Such was the case with the former SMBR Project's structure, the SMBRC's original structure, and the re-structuring of the Technical Advisory Committee.

Section VI. 3. of the MOU expressly authorizes the Governing Board to amend the MOU by a majority vote of its voting members.

Why Are Amendments Appropriate at this Time?

While the MOU has been the primary guide to the functions and operation of the SMBRC (much as the By-Laws were for the predecessor Santa Monica Bay Restoration Project, which was replaced by the Commission pursuant to the above-referenced Public Resources Code sections), there are numerous provisions that have proven to be unwieldy, confusing, or outdated. The purpose of discussing proposed amendments is to

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address some of these outstanding issues within the MOU, in line with the original intent of the legislation and how the SMBRC has realistically operated in the eight years since the MOU's adoption. Another purpose is to encourage active participation in SMBRC activities through expanding the Governing Board's scope and voting membership.

Staff has worked with State Water Resources Control Board legal staff and US EPA staff on the potential issues/changes to ensure that they are consistent with state law and continue to meet the requirements of the National Estuary Program. The Executive Committee discussed potential changes and recommended that the Governing Board discuss the issues and potential changes before a revised draft of the MOU is presented for consideration at a subsequent Governing Board meeting. The following paragraphs summarize issues areas that the Executive Committee and staff recommend for consideration by the Governing Board.

Should We Expand the Governing Board and Increase the Number of Voting Members?

The Governing Board consists of 20 voting members and 15 non-voting members. The existing structure contains an inconsistent mix of who may and who may not vote. For example, on the local level, the Department of Public Works for the City of Los Angeles is a voting member, but the Las Virgenes Municipal Water District and the Los Angeles County Fire Department Lifeguard Division are not. Likewise, on the state level, the Coastal Commission and Coastal Conservancy are voting members, but the Department of Parks and Recreation and Department of Fish and Game are not. In light of how the SMBRC has grown and progressed since the original MOU, there is no practical reason for these divisions to continue.

The MOU could be amended to expand the voting membership to include all state and local entities who actively participate in the Santa Monica Bay watershed, leaving as non-voting the state elected officials, federal agencies, and chairs of the Technical Advisory Committee and SMBRF Board of Directors.

Should Local Watershed Membership on the Governing Board be Expanded?

Suggested changes that were discussed at the Executive Committee level included adding an additional at-large member and additional business interest member specifically from the local tourism-related industry, as recommended previously by this Governing Board; and adding West Basin Municipal Water District, one of the largest water purveyors in the watershed, as a voting ex-officio member.

Should the Chair of the Governing Board Position be Consolidated with the President of the Bay Watershed Council Position?

Currently, these two positions are held by the same person. As President of the Bay Watershed Council, Richard Bloom (representing the City of Santa Monica), became a member of the Governing Board. The Governing Board then elected that position to be



the Chair of the Governing Board. Note that any Governing Board position, voting or non-voting, is eligible to be elected Chair. The amendments previously discussed would already expand the Governing Board. As the Governing Board (with limited exceptions) is a subset of the larger Bay Watershed Council, for consistency purposes, it may streamline our structure if the Chair of the Governing Board presided over both bodies.

If the above-mentioned amendments were adopted, the total Governing Board membership would be 36, of which 28 would be voting, 8 non-voting.

Should the Role of Local Councils of Government be Expanded in the MOU to Reflect A Realistic Selection Process?

The current MOU calls for the Bay Watershed Council to select various local government representatives from various regions (South Bay Cities, Ballona Creek Watershed Cities, Malibu Creek Watershed Cities). In theory, multiple cities from a particular region could be nominated and run against one another for a seat. In *practice*, prior to the SMBRC elections for these positions, the local councils of government (COGs) have formally worked out the representation among themselves for the Ballona Creek and Malibu Creek positions and have offered up one, uncontested candidate who then takes the Governing Board seat by acclaim. An amendment to the MOU would formally recognize this practical, regional approach through participation of the COGs in SMBRC activities and expand the collaborative regional nature of the SMBRC structure. A separate “election” process for these positions by the SMBRC would be deleted.

Should an Expanded Governing Board be Authorized to Elect Additional Members of the Public to the GB?

As noted above, the expanded Governing Board would include an additional at-large member and business/tourism member. The current MOU authorizes the Bay Watershed Council to elect five of its own members to the Governing Board (two public interest positions, one business position, and two at-large positions), . The chair of the Bay Watershed Council also has an ex-officio seat on the Governing Board. This process is burdensome and confusing, as it amounts to two different bodies (one a governing body, the other an advisory body) having similar roles with respect to appointment procedures.

Amendments could be considered that would consolidate the election of additional Governing Board members within the proposed expanded Governing Board body. Thus, the 29 ex-officio and appointed Governing Board members would nominate eligible entities to fill two public interest positions, two business positions, and three at-large positions. The Governing Board would establish, by these amendments to the MOU, eligibility criteria for nominations, and would hold elections for those positions at a regularly-scheduled meeting.

Amendments could specify the qualifications that nominated entities must have, as well as specific nomination procedures. Proposed amendments could also specify that



nominees either come from the existing citizen advisory committee (the Bay Watershed Council) or that they may be nominated from the general public.

Should the Bay Watershed Council be Renamed as the “Watershed Advisory Council” or Some Other Descriptive, but Unique Title?

The Santa Monica Bay Restoration *Project*, which was the predecessor to the SMBRC, had as its governing body an entity known as the Bay Watershed Council. When the MOU was drafted and the Project was replaced by the Commission, the governing body was named the Governing Board. However, the name *Bay Watershed Council* was given to the Commission’s citizen *advisory* committee.

Since the inception of the MOU, the changing and renaming of the governing body as the “Governing Board,” but retaining the name “Bay Watershed Council” for the advisory body has served as a point of confusion not only for historically interested parties, but for newcomers to the SMBRC’s activities as well. Staff has regularly addressed questions from members of local governments, such as “If I am a member of the Bay Watershed Council, why am I not part of the governing body?” and “The Bay Watershed Council used to be the governing body. Why is this no longer the case?”

Consistent with the requirements of the NEP program, but reflecting the structure and processes of the SMBRC, amendments could be considered that would recast the Bay Watershed Council as the “Watershed Advisory Council” (or some other suitable name) to make clear its primary role and to distinguish it from prior, but now defunct structures within the old Santa Monica Bay Restoration Project.

Should Criteria for Membership in the Citizen Advisory Committee and Procedures for Applying for Citizen Advisory Committee Membership be Developed?

The current MOU established an inconsistent list of Bay Watershed Council members (some Governing Board members and other local cities were inadvertently dropped off in a drafting error, etc.). The current MOU also does not establish criteria for becoming a member of the citizen advisory body, nor how an interested entity would apply for such membership.

In addition to cleaning up some of the clerical errors (discussed below), proposed amendments could be developed that answer two common questions: “Who is qualified to be on the citizen advisory committee?” and “How do I apply for membership?”

Consistent with the makeup of the Governing Board, both as proposed and historically, membership criteria can be developed to ensure that the citizen advisory committee (Bay Watershed Council/Watershed Advisory Council) is comprised of entities with an interest in the Santa Monica Bay watershed. To ensure that a membership application is made with the consent of the interested entity’s governing body, a formal document showing intent could also be required.



Should the MOU Specify the Manner of Annual Citizen Advisory Council Meetings?

In order to reflect a practical and effective means of providing a forum for discussion, with the ability to make recommendations to the Governing Board regarding SMBRC policy and program priorities, amendments could be considered that specifically identify regular meetings and/or symposia as the primary manner in which the citizen advisory committee will meet.

Since its inception, some of the most popular and effective methods of participation of a large body of SMBRC stakeholders has been the symposium format. Successful symposia include the 2008 State of the Bay Conference as well as the 2009 Ballona Wetlands Science and Research Symposium. At these events, a large, diverse group of stakeholders was organized to exchange ideas, debate, and provide recommendations to the Governing Board and staff for future activities. Staff envisions an annual citizen advisory committee symposium that would serve both as a review of SMBRC activities and programs, as well as a method by which recommendations for the future can be delivered.

Removal of Erroneous References and Outdated Provisions

As with any piece of legislation or regulation that has been followed for a length of time, there is always room for “clean up” of provisions that are inconsistent, unclear, out of date, or have unintended circumstances. The following proposed amendments have been identified by staff and stakeholders, and have been reviewed by SWRCB legal counsel:

Removal of “Attachment C: Potential Work Group Issues”: When the MOU was first approved, Attachment C served as a beginning point for organizational purposes. With over eight years of experience, updated priorities, and an updated Bay Restoration Plan, this attachment is no longer necessary.

Removal of Erroneous Reference to SMBR Project By-Laws: In the description of the new Bay Watershed Counsel as an advisory body, the MOU also states that the Bay Watershed Council must adhere to the by-laws of its predecessor governing body (also known as the Bay Watershed Council). Since the old system is now defunct and the old by-laws have been replaced by the MOU for the new governing body (the Governing Board), reference to a defunct by-law system has no force or effect on the new advisory body. Removal of the reference is consistent with the existing MOU as well as the proposed changes.

Remove Provision in Section VI. 3. Allowing “Particularly Affected” Party to Object to MOU Changes: This provision apparently attempted to give a veto power to the signatory parties (California Resources Agency, Cal EPA, the Chair of the Bay Watershed Council). However it is wholly inconsistent with the prior sentence authorizing the MOU to be amended by a majority vote of the Governing Board’s voting members. While the original signatories possessed the power to develop and sign off on



the MOU, the practical power of the SMBRC continues to lie with the Governing Board and its advisory bodies. Further, no specific definition of how a party is “particularly affected” is given.

Update Attachment B Bay Advisory Council Membership List: Examples include adding the City of Rancho Palos Verdes and the City of Los Angeles, which were left off the original MOU draft (a typographical error). Further, defunct organizations or organizations with no interest or activity within the Santa Monica Bay watershed can be deleted. These amendments, coupled with the proposed provisions clarifying citizen advisory council membership, are intended to reduce potential confusion regarding the MOU and the SMBRC structure.