



bay restoration commission

STEWARDS OF SANTA MONICA BAY

santa monica bay restoration commission / 320 west 4th street, ste 200; los angeles, california 90013
213/576-6615 phone / 213/576-6646 fax / santamonicabay.org

September 12, 2011

Agenda Item #3a-i

To: Executive Committee, SMBRC
From: Scott Valor, Director of Government Affairs
Subject: Draft Amendments to the Memorandum of Understanding (MOU)

Action Requested of the Executive Committee:

- Recommend that the Governing Board review and consider MOU amendments at its October 20, 2011 meeting

Updated Information Since July Executive Committee Meeting

While the draft MOU amendments before you at this meeting are substantially similar to those that were reviewed at the July EC meeting, based on input from Governing Board members and staff, some revisions have been made. A brief summary of those revisions:

- Those members of the Governing Board that will be elected (the at-large, business, and enviro/public interest members, not the ex-officio or appointed members), would be nominated from the Watershed Advisory Council. The previous version took the nominees from the general public.
- West Basin was removed as a new ex-officio member. West Basin continues to be eligible for an at-large position, as it currently holds.
- The annual meeting of the Watershed Advisory Council was re-cast as a workshop. References to a symposium were deleted.
- Minor grammatical changes were made.

Additional issues to consider:

- Should the Watershed Advisory Council list (Attachment B to the MOU) be removed and maintained separately? Currently, the Technical Advisory Committee list is separate, which precludes a change to the MOU each time a new member is added or removed.
- Should future Watershed Advisory Council applicants be required to demonstrate that they support the goals and objectives of the SMBRC in the letter of interest and resolution that is proposed in these amendments? See draft MOU section III B, paragraph #2.





Background

The SMBRC 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 and two members to the Bay Watershed Council. No additional amendments have been considered since then.

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

Purpose of Proposed Amendments

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 the proposed amendments is to 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 proposed changes to ensure that they are consistent with state law and continue to meet the requirements of the National Estuary Program (NEP) of which the SMBRC is a member. The following paragraphs summarize the primary changes that are proposed.

Expand Governing Board and Increase Number of Voting Members

The current Governing Board consists of 35 members, 20 voting and 15 non-voting. 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 proposed changes 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.



Expanding Local Watershed Membership on the Governing Board

The proposed amendments will add an additional at-large member and additional business interest member specifically from the local tourism-related industry as recommended previously by this Governing Board. In addition, to streamline the governing structure, the amendments will delete the position of the President of the Bay Watershed Council and instead authorize the Chair of the Governing Board to preside over the new citizen advisory entity.

Total Governing Board membership would be 35, of which 27 would be voting, 8 non-voting.

Expanding Role of Local Councils of Government to Reflect 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 and have offered up one, uncontested candidate to the SMBRC to be considered. The proposed amendments formally recognize this practical, regional approach through participation of the COGs in SMBRC activities and expands the collaborative regional nature of the SMBRC structure.

Authorize Expanded Governing Board 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 existing citizen advisory council (known as the Bay Watershed Council) to elect various of its members to two public interest positions, one business position, and two at-large positions (in addition to the advisory committee's chair) to the Governing Board. This process has proven to be both burdensome and confusing, as it amount to two different bodies (one a governing body, the other an advisory body) having similar roles with respect to appointment procedures.

As no other NEP program has this type of provision, and in order to be consistent with existing, approved NEP programs, the proposed amendments would consolidate the election of additional Governing Board members within the proposed expanded Governing Board body. Thus, the 28 ex-officio and appointed Governing Board members would nominate eligible entities from within the watershed to fill two public interest positions, two business positions, and three at-large positions and hold elections for those positions at a regularly-scheduled Governing Board meeting.



The proposed amendments specify the qualifications that nominated entities must have as well as the nomination procedures.

Renaming the Bay Watershed Council as the “Watershed Advisory Council”

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 Bay Watershed Council remained, even though the MOU expressly states that its role is advisory, not as a governing body.

Since the inception of the MOU, the change of the “Bay Watershed Council” from the governing body to 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 Santa Monica Bay watershed’s unique circumstances, the proposed amendments will recast the Bay Watershed Council as the Watershed Advisory Council to make clear its primary role and to distinguish it from prior, but now defunct structures within the old Santa Monica Bay Restoration Project.

Developing Criteria for Membership in Watershed Advisory Council and Procedures for Applying for Watershed Advisory Council Membership

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 advisory body, nor how an interested entity would apply for such membership.

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

Consistent with the makeup of the Governing Board, both as proposed and historically, it is the intent of the membership criteria to ensure that the 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 is required.



Specifying Manner of Annual WAC 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, the proposed amendments specifically identify the workshop as the primary manner in which the Watershed Advisory Council will meet.

Since its inception, one of the most popular and effective methods of participation of a large body of SMBRC stakeholders has been the workshop format. At past workshops, 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 Watershed Advisory Council workshop that would serve both as a review of past and existing SMBRC programs, as well as a method by which recommendations for the future can be delivered.

Clean up 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 proposed amendments address many of these issues that have been identified by staff, stakeholders, and legal counsel. Examples include:

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 Counsel must adhere to the by-laws of its predecessor governing body (also known as the Bay Watershed Counsel). 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 party is “particularly affected” is given.

Update Attachment B Bay Advisory Council Membership List: Examples include the City of Rancho Palos Verdes and the City of Los Angeles. Further, defunct organizations or organizations with no interest or activity within the Santa Monica Bay watershed have been deleted. These amendments, coupled with the provisions clarifying Watershed Advisor Council membership, are intended to reduce potential confusion regarding the MOU and the SMBRC structure.