Measure M 2 Environmental Cleanup Allocation Committee

September 8, 2011, Meeting Minutes

Committee Members Present:
Vice Chair Garry Brown, Orange County Coastkeeper
John Bahorski, City of Cypress
Tim Casey, City of Laguna Niguel
Gene Estrada, City of Orange
Tom Rosales, South Orange County Wastewater Authority
Hector B. Salas, Caltrans
Sat Tamaribuchi, Environmental Consultant
Dick Wilson, City of Anaheim

Committee Members Absent:
Mark Adelson, Santa Ana Regional Water Quality Control Board
William Cooper, UCI
Chad Loflen, San Diego Water Quality Control Board
Joe Parco, City of Santa Ana
Chair Mary Anne Skorpanich, County of Orange-Watershed & Coastal Recourses Program

Orange County Transportation Authority Staff Present:
Kirk Avila, Treasurer
Marissa Espino, Senior Strategic Communications Specialist
Kelley Jimenez, Strategic Communications Coordinator
Abbe McClenahan, Manager of Measure M Programs
Charlie Larwood, Planning & Analysis Section Manager
Kia Mortazavi, Executive Director of Development
Dan Phu, Project Development Section Manager

Guests
Keith Linker, City of Anaheim
Ken Susilo, Geosyntec
Wallace Walrod, Orange County Business Council

1. **Welcome**
   In the absence of Chair Mary Anne Skorpanich, Vice Chair Garry Brown chaired the meeting. He welcomed everyone and began the meeting at 10:10 a.m.

2. **Approval of the July and August 2011 Minutes**
   No corrections or additions to the July or August 2011 minutes were requested. For the July minutes, a motion was made by Dick Wilson and seconded by Sat Tamaribuchi as presented. For the August minutes, a motion was made by Sat Tamaribuchi and seconded by Garry Brown as presented. Both motions passed.

3. **Tier 2 Study Update and Policy Discussion**
    Charlie Larwood gave an update on the progress of the Tier 2 Study and the recent policy discussions. He said today's goal is to reach consensus on the following:

    - Funding Guidelines Policy Recommendations
    - Funding Scoring Methodology
    - SBPAT – Specific Analysis Parameters

    Wallace Walrod gave an overview of the work completed so far on the Tier 2 Study.

    Gene Estrada asked if the audit process will be talked about or just what is in the manual. Wallace Walrod said just what is in the manual. Gene Estrada said he would like to talk about the audit process, if not now then in the future. Gene said he had been talking to Orange County Transportation Authority (OCTA) staff and found out there were some things he was not aware he would be asked to produce. This came as a surprise to him and he felt the jurisdictions would be surprised also. Vice Chair Garry Brown said they could be talked about now.

    Gene Estrada said he has learned there will be an ongoing audit process well beyond construction of a Tier 2 project. This is different from the typical road projects and is not widely known to the jurisdictions. Charlie Larwood said because there was not a required match for operations and maintenance (O&M) on any of the road projects, the Environmental Cleanup Allocation Committee (ECAC) wanted the match to be made available to the cities and give them the opportunity to put up what they would need to provide in O&M as part of the match for any BMP they chose to put in. OCTA needed to show how the O&M was being completed and will be doing audits on a twice a year basis over the life of the BMP (approximately 10 years). Charlie Larwood said he is looking into trying to reduce the time period but OCTA needs to show the auditors they are not just handing out money on a promise.

    Gene Estrada said he was concerned about the number of years, the amount of paperwork this would entail and the liability involved. Charlie Larwood said he would share his concerns to the OCTA auditors and also make sure the local jurisdictions are aware that they will be audited for what they committed to.

    Tim Casey asked if someone would explain the section on scope reductions and cost savings. Dan Phu said this is handled the same way as the Road Program. As an example, if a $100,000 project is found to only cost $80,000, the share of the money will be reduced. The question is, since the Road Program does not address the long term O&M, how should this be handled for the Tier 1 and Tier 2 Programs?

    The Committee discussed 50 acres as the minimum catchment area size. Gene Estrada said the regional larger projects should get higher scoring but this minimum

does not prohibit smaller projects from being submitted, which are eligible and meet the criteria.   Charlie Larwood summarized the discussion as the Committee is interested in smaller projects being eligible but not necessarily giving them points consideration; the larger regional projects would be given a higher scoring point total.

Hector Salas said he disagreed with this approach – he was concerned setting this minimum would negate some smaller areas with the potential to yield benefits to a much larger watershed. Gene Estrada said maybe there should be no minimum size requirement to apply for Tier 2.   Charlie Larwood said the reason for the size minimum was, previously, the ECAC said they would be happy to see seven or eight projects and talked about setting the funding at $5 million per project. This along with the County's input on monitoring data availability led to setting the minimum to 50 acres and above. This minimum had been discussed at the sub-committee level and recommended by them.

Vice Chair Garry Brown asked if the project was smaller than 50 acres would there be opportunities to not only have a project but have a partner. Gene Estrada said probably not – unless it was at the boundary of a city.

Vice Chair Garry Brown suggested dealing with this issue when the scoring is done. Dan Phu said earlier in the year the 34 local jurisdictions were surveyed on possible projects. He suggested revisiting the 34 local jurisdictions, and the sanitation and water districts (even though they are not eligible jurisdictions) to see if they have any projects they could partner with an eligible jurisdiction. This information should be available within a few months and, as the guidelines are closer to being completed, the ECAC should have a good idea of the range of projects that will be proposed.

Sat Tamaribuchi suggested maybe there should be no minimum acreage.   The people submitting the project should judge whether they believe their project has a higher value. Charlie Larwood said at the last ECAC meeting there was a discussion of having a minimum score to eliminate funding a project for the sake of just funding it.

Tim Casey asked why partnership would give a project a better score when the partnership might not yield a better project. Charlie Larwood said the subcommittee discussed, at length, sustainability and the importance of keeping the projects working over time. They felt if there was more than one partner, then there was a higher probability the project would be sustained over a period of time.

The Committee discussed demonstration of maintenance – the requirement of demonstrating a maintenance plan for at least 10 years. Tim Casey asked if this was more of a "yes" or "no" issue. Charlie Larwood said the subcommittee discussed using 10 years as a minimum and the need to require an "in perpetuity" clause for some of the other projects. These issues haven't been laid out yet but maybe going beyond 10 years could be incorporated into the scoring criteria. Gene Estrada asked

what will happen after the 10 years – he just wanted the jurisdiction to know what they are getting themselves into.

Abbe McClenahan, OCTA Manager of Measure M Programs, gave an overview of O&M and the verification needed to demonstrate the work can be performed.

Gene Estrada asked what kind of documentation will need to be provided to demonstrate the work is being done? Abbe McClenahan said once a commitment is made to use in-kind services as the required match for the project and a plan has been submitted to maintain the project for 10 years or however long the commitment is, OCTA will require a semi-annual review of the project. It was discussed that the O&M minimum requirement could be reduced to five years, however, there is still a requirement to audit this commitment by the project applicant.

Sat Tamaribuchi asked if the requirement could be changed to require jurisdictions to submit an O&M plan and not put a time period on it. Charlie Larwood said yes, it could be done that way but the O&M plan would need some requirements, which staff could recommend through the ECAC.

Hector Salas asked if there were any penalties if the project once built is not maintained. Abbe McClenahan said the Streets and Roads program requires a pavement management plan be submitted each year reporting on the status of the roads. The ECAC could require something similar.

Dick Wilson asked if expenditures prior to award date can be considered fundable. Abbe McClenahan said prior work cannot be considered as matching funds, although points can be awarded for project readiness.

Gene Estrada asked when the award date for the project would begin. Abbe McClenahan said, according to the current guidelines, a letter agreement needs to be executed prior to work beginning on the project. You can proceed with the project prior to the letter agreement but cannot be reimbursed for the funds.

Gene Estrada said when an agency submits an application for a particular project most of the time there is going to be a cost concept as to what this entails. The cost expands enormously when you actually get down to doing plans and specifications. If the specific planning specifications cannot start and get reimbursed until after the agreement has been signed there is a risk that in actuality the project is going to cost more than the OCTA contract. This will be a very big problem for the cities.

Vice Chair Garry Brown said he remembered when the first ECAC discussions started on Tier 1 or Tier 2 it was said design work would be an in-kind funding. Vice Chair Brown asked what is the ECAC's ability to change this. Abbe McClenahan said OCTA follows the state law on projects and a change is not allowed. Kia Mortazavi said this is something OCTA has done for 20 years with respect to calls for projects

and it has served Orange County well and we hold ourselves to these guidelines. He understood the dilemma but it does put the onus on the applicant to think through the project and make sure there are no surprises.

Vice Chair Garry Brown said he would agree with OCTA's experience but his fear was if the process is made so coarse the only people going to apply are people who have to do a project because they are under a mandate by another agency to do it and they do not really have a choice. Maybe this is OK but he would like to see a little more latitude.

Sat Tamaribuchi said the big advantage in funding during the design phase is everybody will have a better sense of the real cost of the project.

Charlie Larwood said these are very good points but when he talked to some of the OCTA executive management there is a concern that, at the end of the day, OCTA is the only one contributing money toward the project and it is all for design or a prior project. The Board is looking for some other support for the capital projects so M2 dollars are not the only dollars in the project.

Gene Estrada said he agreed with Vice Chair Brown. Unless there is very good understanding on what the project is going to cost, which comes from developing plans, and these plans would be non-reimbursable, cities will be reluctant to put money forward to a project they do not know will be funded. The only projects being applied for were projects being built through some other entities' mandate.

Tim Casey said what he was hearing was maybe the rules needed to be reviewed given the nature of the water quality projects. If the rules need to be tweaked, what needs to be reviewed – Chapter 11? Charlie Larwood said, yes, if that were the case, this needed to be taken back and discussed with the OCTA programming department. He asked if there was a recommendation from the ECAC. Tim Casey said he is airing a concern the existing set of rules become an impediment for applicants.

Tom Rosales said he doesn't think it should be ruled out that prior expenses shouldn't be reimbursed retroactively. His organization had two experiences that were unrelated to transportation in which they were going to do the projects anyway. They did feasibility studies and pre-design and when they got the grant awards they were able to go back and get some of the money back.

Tim Casey asked if there was a distinction between a reimbursable prior expenditure versus a recognizable prior expenditure. Abbe McClenahan said OCTA definitely cannot reimburse a prior expenditure because under the Measure M ordinance, you can't supplant funds so this would be an issue. Kia Mortazavi said there is an advantage for work done before contract award; they receive extra points for project readiness. OCTA finds it very difficult to monitor, document, and audit prior

expenses. OCTA does not try and create new rules. They follow state and federal guidelines.

Vice Chair Garry Brown said what he is hearing is there is not room to change the rules because of statute. Dan Phu read from the Measure M2 Ordinance: "A process requiring that environmental cleanup revenues allocated for projects or programs shall supplement and not supplant funding from other sources for transportation related water quality projects and programs." Chair Brown said the intent of this section was to define supplanting funds. As an example, you cannot apply to OCTA to fund street sweeping because it is already being done.

Several committee members said their organizations had received reimbursement from the state for prior expenses.

Abbe McClenahan said the Tier 1 Guidelines state the funding is for capital and not for design. If the ECAC wanted to state in the Tier 2 Guidelines that money could be reimbursed for design work they could. They would just need to be aware they are not funding for just design and not actually completing the project. The Committee discussed how this could be applied to the program.

Vice Chair Garry Brown asked what the Committee feeling was. Gene Estrada said if the ruling can't be changed to retroactive reimbursement for design then it needs to be made very clear to the applicants if a project is started ahead of time (before contract award) then those charges are not reimbursable. Also, if their project exceeds the applied for amount, they will be liable for the excess funds. Abbe McClenahan said this is spelled out in the guidelines but she recommended it be reinforced in the workshops.

Sat Tamaribuchi asked if they were going to add a percentage of reimbursement for design cost to the Tier 2 Guidelines. Vice Chair Garry Brown asked if there is a concurrence to add a 10 percent design cost if awarded a grant as part of the allowable expense. After discussion, the Committee decided to investigate its options further.

The funding scoring methodology and SBPAT-specific analysis parameters discussion items were tabled to the next ECAC meeting due to time constraints.

4. **M2 ECAP Funding**
   Dan Phu gave background and an overview on the M2 ECAP Funding Programs.

   Action Recommendation: Identify future funding opportunities for the Environmental Cleanup Program concurrent with the completion of the funding allocations for the two-tiered program.

Although the ECAC reached consensus on the recommended action, the ECAC did not vote on the item.

5. **Public Comments**
   There were no public comments.

6. **Committee Member Reports**
   There were no committee member reports.

7. **Next Meeting – October 13, 2011**
   A decision was made to hold a special meeting on September 21 or 22 at the OCTA offices to address all tabled items.

8. **Adjournment**
   The meeting adjourned at 12:05 p.m.