

Measure M2 Environmental Cleanup Allocation Committee

December 13, 2012

Meeting Minutes

Committee Members Present:

Chair Mary Anne Skorpanich, O. C. Watersheds
Vice Chair Garry Brown, Orange County Coastkeeper
John Bahorski, City of Cypress
Scott Carroll, Costa Mesa Sanitary District
Hector B. Salas, Caltrans
Sat Tamaribuchi, Environmental Consultant
Dennis Wilberg, City of Mission Viejo
Dick Wilson, City of Anaheim
Marwan Youssef, City of Westminster

Committee Members Absent:

Mark Adelson, Santa Ana Regional Water Quality Control Board
Gene Estrada, City of Orange
Chad Loflen, San Diego Water Quality Control Board
Tom Rosales, General Manager, South Orange County Wastewater Authority
Jean-Daniel Saphores, UCI for William Cooper, UCI

Orange County Transportation Authority Staff Present:

Marissa Espino, Senior Strategic Communications Officer
Janice Kadlec, Public Reporter
Charlie Larwood, Manager of Planning and Analysis
Abbe McClenahan, Manager of Programming
Kia Mortazavi, Executive Director, Planning
Dan Phu, Project Development Strategic Planning Section Manager
Monte Ward, Measure M Consultant

Guest(s)

Amanda Carr, Water Quality Administrator for the City of Irvine
Ken Susilo, Geosyntec

1. Welcome

Chair Mary Anne Skorpanich began the Environmental Cleanup Allocation Committee (ECAC) meeting at 10:10 a.m. and welcomed everyone.

2. Approval of the September 13, 2012 Meeting Minutes

Chair Mary Anne Skorpanich asked if there were any additions or corrections to the September 13, 2012 ECAC meeting minutes. A motion was made by Marwan

Youssef, seconded by Scott Carroll, and carried unanimously to approve the September 13, 2012 ECAC meeting minutes as presented.

3. New ECAC Member Dennis Wilberg and Jean-Daniel Saphores

Chair Mary Anne Skorpanich introduced new (ECAC) member Dennis Wilberg from the City of Mission Viejo representing the 5th District. She said there was also another new member, Jean-Daniel Saphores, but he sent his regrets for today's meeting as he is attending a conference in Hong Kong. Jean-Daniel Saphores will replace William Cooper, who is on sabbatical.

4. 2012/13 Tier 2 Policy Discussion

Dan Phu gave a brief background report on the history of the 2012/2013 Tier 2 call for projects. He said the recent call for projects occurred between June 4 and September 4, 2012 and a total of 12 projects from 10 cities were received. The projects were evaluated by the evaluation committee and some policy questions have come up. Chair Mary Anne Skorpanich noted this was the first time for this particular grant program and the issues that have surfaced were not anticipated when the program was developed.

Monte Ward presented the background and history of the M2 Water Quality Program. In summary, during the recent call for projects, questions arose about certain policy issues. The evaluation committee decided to come back to the ECAC to have a broader discussion about some of the policy issues and how they apply to the application process.

Amanda Carr, Water Quality Administrator for the City of Irvine, gave an overview of the City of Irvine's Peters Canyon Wash Water Capture and Reuse Project.

Chair Mary Anne Skorpanich asked if the Como flow was coming in through storm drains. Amanda Carr said the Como flow comes in through both base flow from the bottom of the channel and miscellaneous flow. They do not have any idea of the amounts for these. Monte Ward asked if any of the two would be groundwater and Amanda Carr responded there would be some groundwater flow.

Scott Carroll questioned how big the pipe was going to be. Amanda Carr said the beginning pipe would be eight inches in diameter and increase to a 12-inch diameter pipe at the end of the project.

Scott Carroll asked if they had looked at contracting out the project instead of using the Irvine Ranch Water District (IRWD). Amanda Carr reported IRWD will be contracting the project out rather than doing it themselves.

Monte Ward inquired if there was any excess capacity built in and Amanda Carr replied yes, they added 25%.

Scott Carroll asked who would be responsible for maintaining the pipeline. Amanda Carr said IRWD will provide operation and maintenance and the partners will pay them to do this.

Marwan Youssef asked whose right of way the project will be in. Amanda Carr stated the flood control district and portions of Irvine and Tustin. Marwan Youssef asked if the Sanitation District had agreed to accept the untreated water. Amanda said they are in negotiations with them to firm this up.

Monte Ward asked, as an applicant, would they have a problem with the requirement to have the negotiations closed before beginning the project. Amanda Carr said they would not move forward unless all negotiations are closed.

Dick Wilson asked if they were under any order from the Regional Board to treat the discharges. Amanda Carr held that they are currently in compliance with their permit in the current form. They do not have requirements to build this project or a similar project but they do have goals of reducing discharges. They are offsetting their selenium discharges currently but they are looking for a larger and more permanent offset.

Dick Wilson voiced this is clearly above and beyond what they are regularly required to do. Garry Brown said there is a federal EPA TMDL for metals in Newport Bay of which selenium is a major component and is enforced today. There is a requirement for the Regional Board and the state for the TMDL. Stakeholders have invested millions of dollars over seven years in coming up with solutions on how to deal with selenium. There is no TMDL from the state at present but there is a necessity to solve the selenium problem and it is expected that a TMDL will be coming from the state shortly.

Amanda said there is a federal TMDL which they are currently operating under. TMDL compliance is forced through their permits. They are in compliance with the requirements contained in their permits which put them in compliance currently with the TMDL.

Dennis Wilberg asked if the question before the ECAC is to try and determine whether there is a transportation nexus between the project and the program. What Irvine is presenting as the transportation nexus is selenium would stay in the groundwater except for the fact of the road requiring dewatering. Monte Ward said this is one component and to refine it further there would be a "supplanting" issue.

Monte Ward gave a history of the situation. The Caltrans facility was built in a time when selenium was not regulated. Amanda Carr said the TMDL in place when 261 went into effect was a nutrient TMDL, so Caltrans built the treatment plant to treat nutrients to comply with this requirement. In 2002, a federal toxic metals TMDL went into place and included a requirement for selenium but there is no way to treat

selenium. The City of Irvine has spent three to five years and millions of dollars to try and find a way to treat selenium and there just is no way to do it and decided diversion is the only option.

Dennis Wilberg asked if the City of Irvine is saying all but 19% of the project is attributed to the transportation infrastructure. Amanda Carr said yes.

Monte Ward said this is one of the key questions: if the ECAC agrees and is comfortable with the description of the definition of transportation nexus.

Garry Brown said this is one of the questions in the process, selenium is not even mentioned in the Federal Highway Administration Manual and is not a road pollutant. He agreed the definition of transportation nexus is something the entire committee should determine.

Dan Phu said the current questions arose because they are part of the safeguards that helped the sales tax pass. Expenditures for this program are scrutinized by the Taxpayers Oversight Committee (TOC) as well as Internal Audit. OCTA needs to be able to demonstrate to the TOC and the Internal Auditor the expenditures are consistent with the Measure M Ordinance, the Plan, and any guidelines in place.

Monte Ward said the policy directions and decisions that need to be made are on two key issues: the transportation nexus requirement and the project replacing existing transportation water quality expenditures. The ECAC is setting policy which will carry into the future and there will be a buy-in needed for any decisions, particularly from the OCTA Board. The key issues are the transportation nexus issue and the supplanting issue.

Chair Mary Anne Skorpanich suggested the ECAC take the questions one at a time.

Policy Question 1: Does the City of Irvine's Peters Canyon Wash Water Capture and Reuse Project meet the definition of transportation nexus?

Marwan Youssef asked if the application said "yes" or "no" on the nexus; it could score high on "lane miles." Garry Brown responded that a decision was made not to score the application until after the policy decisions had been determined.

Scott Carroll asked if the size of the project, \$8.6 million, was a concern. Garry Brown replied the only concern is that the \$5 million being asked for is almost one-half of the funds available and four to five other projects selected would not get funded if this project took up most of the money. This is a problem that can possibly be worked out by phasing the project. Amanda Carr said as long as the phases are close together she did not see a problem.

A motion was made by Scott Carroll, seconded by Dick Wilson, and approved unanimously to find the City of Irvine's Peters Canyon Wash Water Capture and Reuse Project does meet the transportation nexus definition.

Policy Question 2: Does the City of Irvine's Peters Canyon Wash Water Capture and Reuse Project replace existing transportation water quality expenditures?

Monte Ward said the question is: what problem is the project solving and is that problem already being addressed?

John Bahorski asked if the City of Irvine's project was only handling existing problems. Amanda Carr answered it is only handling the existing conditions and variations of the existing conditions – there are no new projects.

Monte Ward said this is one component of supplanting and the other component would be if any of this is being treated today. He believed for the 261 it is. If there is a system in place to treat this and the new project would be replacing that system, how should this be addressed? Amanda Carr said the 261 watering is currently in place on a temporary basis by the IRWD. The IRWD treatment system is a closed system and selenium loading into a closed system is very difficult. IRWD takes water into its system and then sends it back out for reuse which increases the selenium levels within the system. The Sanitation District is not a closed system so either the water will go out the out-fall to the ocean or the water will be sent through micro-filtration where selenium will be captured and the brine will be sent to the ocean. The 261 watering is being sent to IRWD but it does need to get to the Sanitation District for a permanent long-term solution. Irvine is currently paying for water treatment by IRWD and after this project they will be paying the Orange County Sanitation District. The cost will be the same.

Amanda Carr said if the problem with this grant is the 261, this portion can be carved out and the application re-worked. Garry Brown said IRWD's contract for the 261 runs out in 2013 but there is no reason to think a solution would not be worked out before then. Amanda Carr said even if the 261 watering is cut out, the pipeline is still needed.

Hector Salas asked what the supplanting issue was regarding the 261. Is it supplanting the nutrient or the new TMDL which came after the fact? Monte Ward said the relevant question is "Is this already being done?" The answer is yes, it is already being done.

A representative of the IRWD stated the current treatment of this water has always been considered a temporary solution and should not be categorized as supplanting because it has always been considered a temporary solution.

Chair Mary Anne Skorpanich asked what language is in the Ordinance regarding this issue. Monte Ward read from the Ordinance as follows:

1. Measure M Plan, project X – “this program is intended to augment, not replace, existing transportation related water quality expenditures and to emphasize high impact capital improvements over local operations and maintenance costs.”
2. Measure M Ordinance on the role of the ECAC – one of the things the Allocation Committee is to recommend to the OCTA Board for adoption is “a process requiring the environmental cleanup revenues allocated for projects and programs shall supplement and not supplant funding from other sources for transportation related water quality projects and improvements.”

Chair Mary Anne Skorpanich asked if it was in the purview of the ECAC to make recommendations about conditions placed on the provision of grant funds. Monte Ward said yes. He said there is another provision of Measure M stating the money can't be spent for things which would otherwise be the responsibility of a private development or entity.

Garry Brown said in his opinion supplanting means is this going to replace something already being done – is the water being treated now? The answer is yes. The wording does not say short term or long term.

Amanda Carr said her thinking about supplanting when putting the application together was “was this a requirement when the 261 was put in?” Did they have to do something for water quality? They did have to do something for water quality; they built the denitrification facility. The requirements for selenium came on subsequent to the road being built.

Hector Salas asked if Caltrans was providing any matching funds for this proposal. Amanda Carr said in the original contract all the partners would be providing matching funds.

Dennis Wilberg said he agrees with Garry Brown. As he understands from what has been discussed, the selenium problem is currently being taken care of and the project would be replacing something being done now.

Dick Wilson said they are not supplanting something but replacing it with something that will work in the future. This may be a project with too high a dollar amount to be feasible for the program but he would not call it supplanting.

Sat Tamaribuchi said he is hearing two different ideas about whether this is supplanting or not. The committee does not want to make a judgment call and then later find out this is wrong. He wondered if the ECAC should ask legal counsel for an opinion. Monte Ward said legal counsel is likely to say this is a judgment to be made by a recommendation of the ECAC with a final decision by the OCTA Board. He is

not sure legal counsel would give advice on how the decision should be made. Sat Tamaribuchi replied if this is the case then the ECAC has to focus on the language in the Ordinance.

Scott Carroll said he liked the project but does not like the cost and would be more comfortable if the cost was phased. The ECAC discussed how the project could be broken up to make it more feasible. Chair Mary Anne Skorpanich suggested the ECAC make a decision on the supplanting issue and then come back later to discuss the money issues.

A motion was made by Dick Wilson, and seconded by Hector Salas to find the City of Irvine's Peters Canyon Wash Water Capture and Reuse Project does not supplant funding from other sources for transportation related water quality projects and improvements and therefore is eligible for funding. Dick Wilson, Hector Salas, and Chair Anne Skorpanich voted yes. Garry Brown, Dennis Wilberg, Sat Tamaribuchi, Scott Carroll, John Bahorski, and Marwan Youssef voted no. The motion failed.

A motion was made by Dennis Wilberg, and seconded by Marwan Youssef to find the City of Irvine Peters Canyon Wash Water Capture and Reuse Project's 261 component is supplanting an existing requirement from other funding sources for transportation related water quality. Therefore, the 261 component is not eligible for Tier 2 funding. Chair Anne Skorpanich, Garry Brown, Dennis Wilberg, Sat Tamaribuchi, Scott Carroll, John Bahorski, and Marwan Youssef voted yes. Dick Wilson and Hector Salas voted no. The motion passed. Further clarification was made by staff that the 261 component cannot be used as a match for the Tier 2 funds.

Monte Ward said by this vote the direction from the ECAC is to go back and work with the applicant.

5. Public Comments

There we no public comments.

6. Committee Member Reports

There were no further Committee Member Reports.

7. Next Meeting – January 10, 2013

The next meeting of the ECAC will be January 10, 2013 in the OCTA offices.

9. Adjournment

The meeting adjourned at 11:30 a.m.