

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Public Works *MA*

BOARD AGENDA # *C-2

Urgent Routine

AGENDA DATE December 14, 2010

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of an Interim Operations and Maintenance Agreement for the Gomes Lake Facility

STAFF RECOMMENDATIONS:

1. Approve the Interim Operations and Maintenance Agreement for the Gomes Lake facility.
2. Authorize the Public Works Director to sign the Interim Operations and Maintenance Agreement, with the term of December 1, 2010 to May 31, 2011, for the Gomes Lake facility.

FISCAL IMPACT:

The term of the interim agreement is December 1, 2010 through May 31, 2011 with a cost not to exceed \$4,000 as Stanislaus County's share. Funds are available in the Road Operations' Fiscal Year 2010-2011 budget. The total expenses for operation and maintenance of the Gomes Lake facility, under this agreement, is \$25,000.

BOARD ACTION AS FOLLOWS:

No. 2010-758

On motion of Supervisor O'Brien, Seconded by Supervisor Monteith
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Grover

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

The Gomes Lake facility is a pumping station and associated infrastructure constructed by the State of California located just west of Carpenter Road, north of Crows Landing Road, approximately 3.5 miles adjacent to the San Joaquin River. Levees were constructed in the 1950's and 1960's in this area along the San Joaquin River to provide flood protection to certain properties within lands identified as Reclamation Districts (RD) 2091 (Chase) and 2063 (Carpenter). The construction of these levees affected natural drainage courses resulting in storm, irrigation tail water and other waters that would flow to the San Joaquin River being blocked by the levees. The Gomes Lake facility was constructed to correct this situation. This facility allows waters backed up by the levees to be pumped over the levees and into the San Joaquin River.

The Gomes Lake facilities are State owned and had been locally operated and maintained through a Joint Powers Agreement (JPA) between Stanislaus County, Turlock Irrigation District (TID), City of Turlock, Reclamation District 2063, and Reclamation District 2091. This JPA was terminated as of August 1, 2010. This termination was pursuant to Board approval in August 11, 2009. Below is the history of this prior JPA Agreement, in terms of financial obligation.

The first JPA was approved in 1972. The 1972 JPA allocated expenses as follows:

Turlock Irrigation District 41%
City of Turlock 30%
Stanislaus County 19%
Reclamation District 2063 8%
Reclamation District 2091 2%

Under the 2001 revised JPA, expenses were allocated as follows:

Turlock Irrigation District 20%
City of Turlock 35%
Stanislaus County 45%
Reclamation District 2063 0%
Reclamation District 2091 0%

According to County records, neither the original allocation nor the revised allocation in 2001 were based upon an area of benefit study. This lack of backup and technical support for the cost share formula has caused JPA members to request the State to complete a detailed study of area of benefit to determine the proper cost allocation. The State is willing to conduct this study, but would prefer local stakeholders to re-establish a JPA and negotiate a more equitable formula. Negotiations on a new JPA have been ongoing for the past year. Current discussions have resulted in the following proposed financial allocation.

Turlock Irrigation District 21%
City of Turlock 31%
Stanislaus County 16%
Reclamation District 2063 18.1%

Approval of an Interim Operations and Maintenance Agreement for the Gomes Lake Facility

As indicated earlier, there is no technical support, nor justification to support Stanislaus County's past or proposed funding levels, 1972 at 19%, 2001 at 45%, or current interim level of 16%. Upon review of current floodway maps the Gomes Lake facility, and associated levees, do provide some flood control protection to County roads and rights of way. When defined as a percentage of the total area being protected by the levee and pumping system, the roadway area is approximately 2% of the total area being protected. The current intent of negotiations is to gradually modify the County's share of 45% from 2001 to a more equitable amount. The interim share has been negotiated at 16%. It is County staff's intent and anticipation that a new and revised JPA be drafted by the summer of 2011 with the understanding of a maximum 5-year term with a subsequent modification to reduce the County's share to an equitable amount based on the actual flood protection received by Stanislaus County Roads.

In the absence of this new JPA, a 6 month agreement has been drafted to ensure that Gomes Lake facility be operational through the current winter months. Attached is this interim agreement dated December 1, 2010. This agreement allows for a maximum expenditure of \$25,000 for the six month term, with Stanislaus County's share being 16% or \$4,000.

POLICY ISSUES:

This action is consistent with the Board's priority of Effective Partnerships.

STAFFING IMPACT:

There are no staffing impacts associated with this item.

CONTACT PERSON:

Matt Machado, Public Works Director. Telephone: 209-525-4130.

H:\MATT MACHADO\BOS\Board Agenda Items\Gomes Lake Facility Interim Operations And Maintenance\Interim Board Item

Agreement

December 1, 2010

We, the undersigned, acknowledge and recognize that: (1) no formal agreement currently exists for the operation and maintenance of the Gomes Lake pumps and facilities; and (2) reservoir levels in the San Joaquin River basin along with the probability of winter storms create the likelihood that operation of Gomes Lake facilities will be needed to protect land and property during the winter of 2010-2011.

Therefore, it is agreed that for the period of December 1, 2010 through May 31, 2011, unless superseded by an agreement between the parties, the Gomes Lake pumps and facilities shall be operated and maintained by the Turlock Irrigation District in accordance with the same provisions as that of the GLJPA Subagreement with Turlock Irrigation District (enclosed), which terminated on August 1, 2010.

Furthermore, the undersigned agree to share in the expenses of the operation and maintenance of the Gomes Lake pumps and facilities up to a maximum budget of \$25,000, according to the following percentages.

Turlock Irrigation District	21.0%	\$5,250
City of Turlock	31.0%	\$7,750
Stanislaus County	16.0%	\$4,000
Reclamation District No. 2063	18.1%	\$4,525
Reclamation District No. 2091	13.9%	<u>\$3,475</u>
		\$25,000

The Turlock Irrigation District agrees to bill the parties by the 30th of the month following each month when costs are incurred for the operation and maintenance of the Gomes Lake pumps and facilities. The parties agree to pay their share of the billed expenses within 30 days of the date the billing statement is issued. Failure by any party to pay its share within the 30-day period will automatically cause the agreement to terminate for all parties; however it shall not relieve the parties of their financial responsibility incurred to that date.

Any party may terminate its participation in the agreement by providing a written 30-day prior notice to the other parties which will terminate the agreement for all parties on the effective date. In this event, all parties shall continue to be responsible for their respective share of the cost incurred until the termination date. On the termination date, electrical service will be discontinued until a responsible party has submitted a new request for service.

Turlock Irrigation District
By Craig Washburn
Title Interim General Manager
Date 12-17-10

City of Turlock
By Roy W. Warden
Title CITY MANAGER
Date 12/17/10

Stanislaus County
By Matthew
Title Director of Public Works
Date 12/14/10

Reclamation District No. 2063
By Joe Gallabery
Title pres.
Date 1-2-11

Reclamation District No. 2091
By Walter
Title pres.
Date 12-22-10

APPROVED AS TO FORM:
STANISLAUS COUNTY COUNSEL
BY [Signature]
DATE: _____

GOMES LAKE JOINT POWERS AGREEMENT

**SUBAGREEMENT WITH
TURLOCK IRRIGATION DISTRICT**

THIS AGREEMENT is entered into between the Turlock Irrigation District ("TID") and the County of Stanislaus ("County") as the administrator of the Gomes Lake Joint Powers Agreement ("GLJPA"), with reference to the following:

RECITALS

A. The County is responsible for administration of the GLJPA per Section 5 of the GLJPA; and

B. The County as administrator has the authority to appoint a party to the GLJPA (1) to operate and provide routine maintenance of the GLJPA facilities in accordance with Section 4 of the GLJPA, (2) to handle emergency situations, and (3) to manage and oversee the construction of capital improvements on behalf of the administrator; and

C. The County as administrator desires to appoint TID as the party to perform the duties set forth in Recital B above and TID agrees to perform those duties in accordance with the GLJPA and this Subagreement; and

D. The City of Turlock ("City") agrees to the form of this Subagreement; and

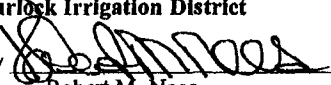
NOW, THEREFORE IT IS MUTUALLY AGREED between the County and the TID as follows:

1. The County as administrator hereby appoints TID (1) to operate and provide routine maintenance of the GLJPA facilities in accordance with Section 4 of the GLJPA, (2) to handle emergency situations, and (3) to manage and oversee the construction of capital improvements on behalf of the administrator; and TID hereby accepts that appointment.
2. Pursuant to Section 4(b) of the GLJPA, TID will perform the following tasks at least twice annually and prior to the start of the winter storm season:
 - (a) Test the Gomes Lake Pumps and control circuits for operational readiness;
 - (b) clean the grates and inlet channel to the pumps;
 - (c) inspect and clean, if required, the Bypass Ditch and stub levee systems;
 - (d) inspect, clean, and operate the gates in the two pipes through the Reclamation District 2063 levee between the end of the Harding Drain and the San Joaquin River.


3. The TID will provide an annual report to the members of the GLJPA summarizing the operation and maintenance activities, any emergency work performed, and any capital improvements constructed, and providing any recommendations for capital improvements pursuant to Section 6 of the GLJPA.
4. The TID will not perform any non-emergency capital improvement work without the prior approval of the GLJPA Board.
5. The TID will directly invoice the GLJPA members their respective shares of the operation and maintenance costs, GLJPA approved capital improvement costs within GLJPA Section 6(b), and emergency repairs and replacement of facilities that would be otherwise be considered a capital improvement, minus TID's share of the costs, based on the cost sharing ratio described in Section 4 (d) of the GLJPA.
6. The TID will promptly inform the County and the City of any emergency actions needed or taken, including major repairs, which would be considered capital improvements under Section 6 of the GLJPA.
7. Neither party, nor any of its governing board members, officers or employees, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the other party under or in connection with any work delegated to or to be performed by that other party under this Agreement, except to the extent that any such damage or liability was caused by the first party. The parties further agree, pursuant to Government Code section 895.4, that each party shall fully indemnify and hold harmless the other party and its governing board members, agents, officers, employees and contractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney fees (collectively referred to as "claim"), arising out of or resulting from any negligent action taken or omitted to be taken by such party under this Agreement, except to the extent that any such claim was caused by the party that would otherwise be indemnified.

IN WITNESS WHEREOF, the parties have executed this sub-agreement to the Gomes Lake JPA dated October 2, 2001 on 7/11/06.

Turlock Irrigation District


By 
Robert M. Nees
Assistant General Manager

**County Of Stanislaus, as Administrator of the
Gomes Lake Joint Powers Agreement**

By  _____
George Stillman
Director Department of Public Works

Approved as to form and content

City of Turlock

By  _____
Richard Burton
City Attorney