



COUNTY OF PLACER
Community Development/Resource Agency

ADMINISTRATION

Michael J. Johnson, AICP
Agency Director

MEMORANDUM

TO: Honorable Board of Supervisors
FROM: Michael J. Johnson, Director *MJ*
DATE: October 11, 2011
SUBJECT: Water Resources Development Act of 2000 Position for Placer and Butte Counties

ACTION REQUESTED:

The Planning Services Division is requesting that the Board:

- 1) Authorize the Community Development/Resources Agency Director to sign a Memorandum of Agreement (MOA) with the United States Army Corps of Engineers (Corps) to provide funding for a half-time Water Resources Development Act (WRDA) staff position, and
- 2) Sign the attached budget revisions to first, appropriate funds in the open space trust fund and secondly, transfer the appropriation to the Community Development/Resource Agency - Planning Services Division for the Water Resources Development Act (WRDA) staff.

BACKGROUND:

Section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000"), as amended by Public Law 111-315, allows the Secretary of the Army to accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of public projects (e.g., wetland permits and preparation of documents for the Placer County Conservation Plan) from that entity that are under the jurisdiction of the Department of the Army. Under this program, a local agency can deposit money in an account with the Corps, and District employees will charge their time against the account to expedite resolution of local permit requests.

ANALYSIS:

Over the past several months, Placer County staff has been working with the Corps to develop the County Aquatic Resources Program (CARP). The CARP is the component of the Placer County Conservation Plan (PCCP) that will integrate the federal Clean Water Act regulations for wetland fills with the permitting activities associated with state and federally listed endangered species. This fully integrated approach will provide for

local control over the outcome of environmental and entitlement review process, and the state and federal agencies will be assured that our mitigation and conservation actions are implementing an agreed-upon plan. To date, this level of integration has not been achieved and the model that is being developed in Placer County, with the full participation of the agencies, is being closely evaluated for its potential to serve similar efforts through the United States.

Placer County is interested in entering into a WRDA agreement to strengthen the County's partnership with the Corps in the PCCP/CARP review. In particular, the WRDA agreement will allow the creativity and knowledge of both respective staffs to coordinate on the preparation of the CARP document and other necessary agreements for the program. Completion of the CARP, and the balance of the PCCP work program, will allow implementation to proceed including land acquisitions, habitat restoration, land management, and monitoring. In addition to the working on the CARP, this agreement will allow for other County's Corps permit requests to be expedited (i.e., public works projects associated with the Departments of Public Works and Facility Services).

It is expected that staff funds and time for the WRDA position would be split between Placer and Butte County in a 50:50 relationship. Butte County is also working on a Habitat Conservation Plan and would like to gain additional Corps staff support. Both Placer and Butte will fund half of the full time Corps staff position (\$97,000 for a half time allocation for each jurisdiction). Each jurisdiction's MOA is independent of the other – the activities of Butte County are completely independent of the actions of Placer County. The Corps will be prepared to make a decision on the staff person who will work with Placer County before November 1, 2011.

Funds contributed for this position will be expended to defray the costs of additional regulatory staff (including salary, associated benefits, overhead, and travel expenses) and other costs in order to expedite the evaluation of permit requests submitted by the County. Such activities will include, but not be limited to the following: application intake review, permit database entry, drawing correction, jurisdictional determinations, site visits, public notice preparation, preparation of correspondence, conduct of the public interest review, preparation of draft permit decision documents, meetings, agencies and applicants, and any other permit evaluation-related responsibilities that may be mutually agreed upon. The staff allocation will last as long as the funding is available.

FISCAL IMPACT:

The estimated annual cost for the proposed full-time WRDA position is \$194,000. Placer and Butte County would split this cost 50-50; therefore, Placer County's share would be \$97,000. In the event that the Butte County Board of Supervisors does not approve funding 50 percent of the full-time WRDA position, the Corps will designate a half-time WRDA staff position for Placer County.

It is recommended that the \$97,000 be funded from the Open Space Trust Fund. It is the intention that Departments that utilize the WRDA position refund the Open Space Trust fund in an amount equal to the cost associated with any project review resulting in permits being issued by the WRDA staff position.

Exhibits:

Exhibit 1: Draft Memorandum of Agreement (MOA) with the United States Army Corps
of Engineers

Exhibit 2: Budget Revisions

cc: Tom Miller, County Executive Officer
Scott Finley, Supervising Deputy County Counsel
James Durfee, Director of Facility Services
Ken Grehm, Director of Public Works
Mike Nepstad, U.S. Army Corps of Engineers

**MEMORANDUM OF AGREEMENT
BETWEEN THE COUNTY OF PLACER
AND THE U.S. ARMY CORPS OF ENGINEERS,
SACRAMENTO DISTRICT**

THIS AGREEMENT is entered into as of this _____ day of _____, 2011 between the County of Placer, (hereinafter the "County") and the Department of the Army, represented by the United States Army Corps of Engineers, Sacramento District (hereinafter the "District"), collectively referred to as "the Parties."

WITNESSETH THAT:

WHEREAS, the United States Army Corps of Engineers ("Corps"), has jurisdiction over certain activities occurring in United States, including wetlands, and

WHEREAS, Section 214 of the federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000"), as amended by Public Law 111-315, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214 of the WRDA 2000, as amended by Public Law 111-315, to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers, by memorandum dated _____ 2011, has authorized the District and Division Engineers of the Corps to accept and expend funds contributed by non-federal entities subject to certain limitations; and

WHEREAS, the Corps has indicated it is not able, without additional resources, to expedite the evaluation of permits of the non-Federal entity related to projects for a public purpose; and

WHEREAS, the County requires expedited and priority review of certain projects in the County boundaries by the District; and

WHEREAS, the District issued an initial Public Notice dated _____, 2011, regarding its intent to accept and expend funds contributed by non-Federal public entities for such purposes; and

WHEREAS, the District has determined that expenditure of funds received from the County will be in compliance with Section 214 of WRDA 2000, as amended by Public Law 111-315, and a public notice dated _____, 2011, regarding the District Engineers' decision has been issued; and

210

EXHIBIT 1

WHEREAS, it is understood and acknowledged by all Parties that District' review of County projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

WHEREAS, the County is a non-Federal public entity.

NOW, THEREFORE, the County and the District agree as follows:

AGREEMENT

Article I. - PURPOSE AND AUTHORITIES

Pursuant to Section 214 of WRDA 2000, as amended by Public Law 111-315, this MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by the County to expedite the evaluation of permits under the jurisdiction of the Army. This MOA is not intended as the exclusive means of obtaining District review of County projects. This MOA is a vehicle by which the County may obtain expedited review of County projects designated as a priority, outside of the ordinary District review process.

Article II. - SCOPE

A. The County will provide funds to the District for federal fiscal year(s) (FY) 11/12 to expedite the evaluation of County projects under the jurisdiction of the District. The County may elect to extend the funding beyond FY 11/12, subject to the terms of this MOA. The phrase "federal fiscal year" in this MOA refers to the period beginning October 1 of each year and ending on September 30 of the following year. The District' regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Funds received from the County will be used to augment the District regulatory budget in accordance with the provisions of WRDA.

B. The District will establish a separate account to track receipt and expenditure of the funds associated with its review of County priority projects. District employees will charge their time against the account when they do work to expedite resolution of County permit requests.

C. Funds contributed by the County hereunder will mainly be expended to defray the costs of additional regulatory staff (including salary, associated benefits, overhead, and travel expenses) and other costs in order to expedite the evaluation of permit requests submitted by the County. Such activities will include, but not be limited to, the following: application intake review, permit database entry, drawing correction, jurisdictional determinations, site visits, public notice preparation, preparation of correspondence, conduct of the public interest review, preparation of draft permit decision documents, meetings with the County, agencies and applicants, and any other permit evaluation-related responsibilities that may be mutually agreed upon. Funds will *not* be expended for review by supervisors or other persons or elements of the District in the decision-making chain of command. Enforcement or compliance activities will not be paid for from the funds contributed by the County, nor will such funds be used to pay for the costs of public hearings and distribution of public notices.

D. Funds may be expended to hire contractors to perform select duties, such as site visits, technical writing, copying, reviewing technical materials, preparing regional general permits for use by the County and others, Essential Fish Habitat assessments, and other technical documents, including draft environmental documents for the purpose of augmenting the resources available to the District regulatory staff for expediting priority permit applications submitted by the County. If such expenditures, when combined with the costs of the regulatory staff, require funding in excess of the amount specified in this, then said contractors shall not be hired until and unless additional funds are approved by the County and memorialized by written amendment to this MOA.

E. If the County's funds are expended and are not renewed, the Parties will terminate this MOA in accordance with Article X.A and any remaining County priority permit applications will be processed pursuant to the standard permit application review procedures, in a manner decided by the assigned Regulatory Project Manager and his or her supervisor.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the District and the County, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on specific permit actions. Each party will issue a delegation letter to the other designating the Principal Representative for each agency.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. The County shall:

1. Provide adequate information regarding priority projects and other specific activities to initiate permit evaluation. Upon request, the County shall provide supplemental information necessary to assure the District can effectively accomplish the required review.

2. Make a reasonable effort to provide the District with information on other projects with County involvement that may affect the District's workload and staff availability (e.g., schedules for projects with individual permits).

3. In consultation with the District, schedule District involvement in the priority projects identified by the County.

4. To the best of its ability, ensure the participation of all essential personnel, customers and decision makers during the permit evaluation process.

5. Work closely with the District to resolve workload conflicts and adjust priorities and schedules in order to make optimal use of available staff resources.

B. The District shall:

1. Expedite permits in accordance with the purpose, terms, and conditions of this MOA. The District shall not redirect resources from, or otherwise postpone, other County projects submitted through the standard District review process.

2. Consult with the County regarding an adjustment of priorities or establishment of relative priorities if the current and/or projected workload of priority projects and activities exceeds District's ability to provide the services specified in this MOA.

3. Provide the County an annual summary report of progress made under this MOA. This report will describe achievements, including any improvements the District has documented in coordinating and improving the efficiency of environmental reviews, and will summarize expenditures to date. The report also will identify any recommendations for improving consultation and coordination among the Parties to this MOA.

4. Designate a Regulatory Project Manager who will make his or her best efforts to attend periodic meetings with the County.

Article V. FUNDING

A. The County will pay the District an amount not to exceed \$97,000 for purposes of funding a project manager one year, including overhead, and associated support personnel for the term of this MOA.

B. The County may elect to extend the services under this MOA and fund the costs of the project manager during the FY2011 and subsequent federal fiscal years for as long as this MOA remains in effect. In the event the County elects to continue services under this MOA beyond FY 11/12, no later than August 1, 2011 and annually thereafter, the County shall provide written notice of this decision to the District's Principle Representative. After receipt of the County's notice and no later than September 1, 2011 and annually thereafter, the District will provide the County with an updated cost estimate that provides an estimate of costs for the next federal fiscal year, including any proposed changes in the level of staffing. Upon receipt of the District's updated cost estimate and in advance of the District incurring any costs for the next federal fiscal year, the County will make a lump sum payment to the District in the total amount specified in the District's cost estimate.

C. Costs incurred by the District under this MOA may increase due to the Federal Government's General Schedule increases and locality pay adjustments. In the event of such increases, the District will promptly notify the County of the additional amount necessary to continue services under this MOA. Upon receipt of such notice, the County shall either make a lump sum payment for the additional amount or agree to a reduced level of service.

D. Funds will be payable in one lump sum in advance of the District incurring any financial obligations under this MOA and no later than ninety (90) days after the effective date of this MOA as defined in Article XI. Payment will be made by check or electronic funds transfer to the Finance and Accounting Officer, U.S. Army Corps of Engineers, Sacramento District.

E. Any carry-over funds from year to year would be credited to the following fiscal year's payment, or refunded if this MOA is terminated or expires.

Article VI. - APPLICABLE LAWS

All applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of environmental permit applications undertaken by District will be governed by District regulations, policies and procedures.

Article VII. - DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute between the Parties, the County and the District shall use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. The Parties agree that, in the event such measures fail to resolve the dispute, they shall refer the dispute for resolution to an appropriate forum in accordance with Federal law.

Article VIII. - PUBLIC INFORMATION

The District will not be responsible for justifying or explaining County programs or projects before other agencies, departments and offices. The District may provide, upon request from the County, any assistance necessary to support justification or explanations of activities conducted under this MOA. In general, the District is responsible only for public information regarding District regulatory activities. County will give the District advance notice before making formal, official statements regarding District activities funded under this MOA.

Article IX. - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA will not affect any pre-existing or independent relationships or obligations between the County and the District.

B. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

Article X. - AMENDMENT, MODIFICATION AND TERMINATION

A. This Agreement may be modified or amended only by written, mutual agreement of the Parties. Either party may terminate this MOA prior to its expiration date by providing written notice to the other party. Such termination shall be effective upon the sixtieth (60th) calendar day following notice, unless a later date is set forth. In the event of termination, the County shall continue to be responsible for all costs incurred by the District under this MOA prior to the effective date of such termination and for the costs of closing out or transferring any on-going County priority projects.

B. Within ninety days (90) days of termination, or expiration of the MOA, the District shall conduct an accounting to determine the actual costs of the work. Within thirty (30) days of completion of this accounting, the District shall return to the County any funds advanced in excess of the actual costs. Funds may be provided to the County either by check or by electronic funds transfer.

Article XI. - EFFECTIVE DATE AND DURATION

This MOA will become effective when signed by both the County and the District. This MOA shall remain in force until the earlier of the following events: (1) December 31, 2016, unless the sunset clause in Section 214 of WRDA 2000, as amended by Public Law 111-315, is extended prior to that date, in which case the MOA will remain in effect for the duration of the statutory extension; or (2) the MOA is terminated pursuant to Article X.

Article XII. - INTEGRATION

This MOA, including any documents incorporated by reference or attachments thereto, constitute the entire agreement between the Parties. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

IN WITNESS WHEREOF, the Agreement is executed by the County of Placer, acting by and through its CDRA Director or his designee, pursuant to Resolution No. _____ authorizing such execution, and by the U.S. Army Corps of Engineers, through its authorized officer.

For the County of Placer

MICHAEL J. JOHNSON, AICP
Director, CD/RA
Date: _____

For the U. S. Army Sacramento District of Engineers:

Colonel, US Army
District Engineer
Date: _____

215

PLACER COUNTY

BUDGET REVISION

PAS DOCUMENT NO.

POST DATE:

DEPT NO.	DOC TYPE	Total \$ Amount	TOTAL LINES
09	BR	97,000.00	1

Cash Transfer Required

Reserve Cancellation Required
GL 2420/558000

Establish Reserve Required

JV259359
Fund 150

[Signature]
Auditor-Controller

[Signature]
County Executive

Board of Supervisors

EXHIBIT 2
216

ESTIMATED REVENUE ADJUSTMENT											APPROPRIATION ADJUSTMENT											
DEPT NO.	T/C	Rev	Fund	Sub Fund	OCA	PCA	OBJ 3	PROJ.	PROJ. DTL	AMOUNT	DEPT NO.	T/C	Rev	Fund	Sub Fund	OCA	PCA	OBJ 3	PROJ.	PROJ. DTL	AMOUNT	
											10	014		150		224000	22400	3780				97,000.00
TOTAL											TOTAL											
0.00											97,000.00											

REASON FOR REVISION: Appropriate funds per terms of Memorandum of Agreement with US Army Corps of Engineers for WRDA staff position.

Prepared by Wendy White Ext _____

Department Head _____

Board of Supervisors _____

Date: 9/26/11

Page: _____

Budget Revision # _____ FOR INDIVIDUAL DEPT USE

Accounting Journal Voucher Entry Document Detail List

Document Number **JV259359**

217

User ID: **DLKIRKPA**
 Document Status: **NOPT**
 Fiscal Year: **2012**
 Post Date: **10/11/2011**

Doc Dept	Doc Type	Doc No	Total Amount	Total Lines
09	JV	JV259359	194,000.00	2

Line#	T Code	Dept	OCA	PCA	OL3	Rvrs	Amount	Invoice Description	GLAcct/SubGL	RefDocNo	Sfx	Grant/Detail	Project/Detail	User Code1	User Code2	User Code3
1	402	10	224000	22400		N	97,000.00	Cancel reserve to fund MOA for WRDA Staff	2410							
			Appn 22400	Fund 150												
2	411	10	224000	22400		N	97,000.00	Cancel reserve to fund MOA for WRDA Staff	2420 558000							
			Appn 22400	Fund 150												

Total Document Amount: 194,000.00

Explanation: Cancel Designation to fund Water Resources Development Act staff position per applicable Memorandum of Agreement.

~~DEBIT AUTHORIZED AND APPROVED:~~

Debit Dept/Agency Signature _____ Date _____

Debit Dept/Agency Signature _____ Date _____

~~DOCUMENT PREPARED BY:~~

Preparer's Name _____ Phone _____

Preparer's Signature _____ Date _____

Department Signature _____ Date _____

~~AUDITOR-CONTROLLER~~

Approving Signature _____ Date _____

Accounting Journal Voucher Entry Document Detail List

Document Number **JV259325**

219

Doc Dept	Doc Type	Doc No	Total Amount	Total Lines
09	JV	JV259325	194,000.00	2

User ID: **DLKIRKPA**
 Document Status: **NOPT**
 Fiscal Year: **2012**
 Post Date: **09/22/2011**

Line#	Code	Dept	OCA	PCA	OL3	Rvrs	Amount	Invoice Description	GLAcct/SubGL	RefDocNo	Sfx	Grant/Detail	Project/Detail	User Code1	User Code2	User Code3
1	405	10	224000	22400	3780	N	97,000.00	Funding for WDRA position Appn 22400 Fund 150								
2	410	06	992233		8780	N	97,000.00	Funding for WDRA position Appn 22330 Fund 100								

Total Document Amount: 194,000.00

Explanation: To transfer
 To transfer funding from Open Space Trust Fund to the Planning Division for the WRDA position per MOA with US Army Corp.

DEBIT AUTHORIZED AND APPROVED:

DOCUMENT PREPARED BY:

 Debit Dept/Agency Signature Date

 Debit Dept/Agency Signature Date

 Preparer's Name Phone

 Preparer's Signature Date

[Signature] 9/26/2011

 Department Signature Date

AUDITOR-CONTROLLER:

 Approving Signature Date

