

# **Agenda Item 4.1**

**MINUTES  
SAN JOAQUIN AREA FLOOD CONTROL AGENCY  
DECEMBER 2, 2009**

**CITY HALL  
CITY COUNCIL CHAMBERS  
STOCKTON, CALIFORNIA**

The San Joaquin Area Flood Control Agency (SJAFCA) met on the above date at 11:30 a.m. in a special session with Vice-Chairperson Diana Lowery presiding.

**ROLL CALL**

Board Members Present: Director Fritchen, Director Lowery, and Director Bestolarides.

**ABSENT**

Director Ruhstaller.

**ATTENDANCE**

James B. Giottonini, Executive Director.

**Staff (SJAFCA)**

Roger Churchwell, Deputy Executive Director; Juan Neira, Associate Civil Engineer; Gemma Biscocho, Associate Civil Engineer; Marlo Duncan, Secretary; Cheryle Lawson, Secretary.

**Staff (City)**

Kevin Beltz, Accountant; Guy Petzold, Deputy City Attorney.

**Staff (County)**

Steve Winkler, Deputy Director/Operations; Mark Connelly, Engineering Services Manager.

**Others Present**

Christopher Neudeck, KSN, Inc.; Jennifer Waddle, AgriDesigns; John Stovall, Reclamation District 1614.

**CONSENT CALENDAR**

A motion was made by Director Fritchen to approve the consent calendar; seconded by Director Bestolarides. The motion carried.

- 4.1) Approval of the minutes of the Board meeting of August 17, 2009.

- 6.1) Resolution accepting the Flood Control Facilities Equalization Fee Annual Report for 2008-2009.
- 6.2) Resolution authorizing staff to work with the City, County, and Twin Creeks Homeowners' Association representatives to sort out FEMA certification issues on Bear Creek and Mosher Slough levees.
- 6.3) Resolution authorizing the Executive Director to sign a contract with Peterson, Brustad, Inc. in the amount of \$180,000 for the San Joaquin River Delta Base Flood Elevation Refinement project, as programmed in FEMA's Risk Mapping and Assessment Program grant.

**MOTION: APPROVE CONSENT CALENDAR**  
**ACTION: APPROVED UNANIMOUSLY**

### **PUBLIC HEARING**

- 5.1) Adopt a resolution approving the Engineer's Report of Amended Assessments and confirming the amended assessments to reflect altered parcel configuration for the Flood Protection Restoration Assessment District 96-1/Reassessment and Refunding of 2002 (RR-02).

Executive Director Giottonini stated as property within the SJAFCA Assessment District subdivides and splits, assessments must be amended or "re-spread" to reflect the new parcel configuration. This process, known as assessment apportionment (often referred to as segregation), must be carried out for every subdividing parcel with an unpaid assessment balance. Under the normal procedure for assessment apportionment, property owners, upon submittal of a subdivision map, lot line adjustment, or lot merger (reconfiguration application) to San Joaquin County or the City of Stockton, request an assessment apportionment to reflect the new parcel configuration. SJAFCA's Assessment District Engineer then carries out the assessment amendment in accordance with Division 10.5 of the Streets and Highway Code which does not require SJAFCA Board action or any public hearings.

However, when a parcel configuration is altered without an assessment apportionment being requested by the property owner, assessment amendments must be made in accordance with Part 10 of Division 10 of the Streets and Highway Code of California, which requires Board action and the holding of a public hearing to consider the proposed assessment amendments. Such alterations occur when the County Assessor consolidates or splits existing assessor's parcels. Typically, this is done to divide the tax obligation of a property or multiple properties between property owners or other financial interests without changing the legal lot configuration.

A notice of this public hearing was published in The Record on November 20, 2009.

Executive Director Giottonini stated at the conclusion of the public hearing, it is recommended that the Board approve and adopt a resolution overruling any protests, approving the Engineer's Report of Amended Assessments and confirming the amended assessments to reflect altered parcel configuration for the SJAFCA District.

Director Lowery invited questions and comments from the public. There were no questions or comments and the public hearing was closed.

A motion was made by Director Fritchen to approve and adopt the Resolution; seconded by Director Lowery. The motion carried.

**MOTION: APPROVE CONSENT CALENDAR**  
**ACTION: APPROVED UNANIMOUSLY**

### **STAFF PRESENTATION**

#### FEMA Provisionally Accredited Levee agreements

A presentation was conducted by Roger Churchwell, Mark Connelly, and Chris Neudeck. Roger Churchwell led the presentation with an update on the FEMA Provisionally Accredited Levee (PAL) agreements throughout the City and the County.

The south bank of Bear Creek west of I-5 is designated as a PAL levee. This section of levee is outside of SJAFCA boundaries. As stated in the staff report included in this agenda, SJAFCA staff will work with the County and Twin Creeks Homeowners' Association representatives to sort out levee certification issues affecting Twin Creeks subdivision. As soon as the PAL expires (March 28, 2010), FEMA will provide a letter explaining the requirements to certify both Bear Creek and Mosher Slough. In addition, FEMA will notify the City and the County that Twin Creeks will be placed in the floodplain unless the required documentation is provided within eighteen months.

The PAL documentation for the levees protecting the Landing Area referred to as the Shima Tract (levees located on the eastern side of Shima Tract) was undertaken by SJAFCA as these levees provide protection to both City and County areas. The PAL documentation has been submitted to FEMA. SJAFCA has replied to FEMA's request for additional information. It is expected that these levees will be accredited in the near future; however, we are awaiting final approval.

Fourteen Mile Slough's PAL documentation has been submitted. SJAFCA has also replied to FEMA's request for additional information. It is expected that Fourteen Mile Slough levee will be accredited shortly.

SJAFCA is currently compiling and developing information for Walker Slough's PAL submittal. The PAL submittal is due March 2010. SJAFCA is supporting Reclamation District (RD) 404's effort on internal drainage.

The Calaveras River PAL documentation is an ongoing effort. At this time data is being collected and necessary technical analyses are being performed. Based on preliminary information, there could be some potential underseepage issues at Calaveras and El Dorado/Bianchi. Additional analyses are being performed by SJAFCA to address these issues. Freeboard analyses have been completed and there is enough freeboard to meet FEMA's criteria.

The U.S. Army Corps of Engineers and the State have some issues with encroachments. Mr. Churchwell provided clarification stating that with the submittal of the PAL documentation, if the encroachments are not a structural issue then there should not be any issue with FEMA certifying the levee for 100-year flood protection. Certification of the levee will not diminish the need to work with the U.S. Army Corps of Engineers and the State to resolve these issues. At this time, it appears that the existing encroachments are not causing any structural issues. Encroachments with structural issues are those that are affecting the section or properties of the levee weakening their strength such as large retaining walls. The placement of pavers, for instance, would not be considered a structural issue.

In addition to the encroachment issues, we were investigating the ownership of the levee area adjacent to the Stockton Golf and Country Club. Through research and surveying, Kjeldsen, Sinnock & Neudeck, Inc. (KSN) discovered that an existing right-of-way easement was given to the State by the Stockton Golf and Country Club. The easement is for the levee segment located along River Drive on the lower end of the Calaveras River on the south bank. This levee segment has not been maintained for many years, and the waterside of the levee is heavily vegetated. SJAFCA is currently working with the County in order to initiate removal of the vegetation. In addition to FEMA's technical requirements, FEMA also requires the levee to be owned by a public agency and to have an officially adopted Operations & Maintenance plan.

Mark Connelly continued the presentation with an update on maintenance issues. He stated the County is willing to assume maintenance and remove the heavy vegetation for the levee segment located along River Drive. After the initial vegetation is removed, the County will provide on-going maintenance in order to meet FEMA's certification standards.

Since SJAFCA's last board meeting (August 17, 2009), the Central Valley Flood Protection Board (CVFPB) has held public hearings in Stockton regarding the encroachment and maintenance deficiencies along Bear Creek. The CVFPB recently mailed out resolutions to each of the property owners outlining what encroachments have been approved. The vast majority of the items that property owners requested have been denied. The CVFPB is starting a new phase; an enforcement phase. Property owners will likely have an opportunity to once again present matters before the CVFPB as part of the enforcement hearing. Once the CVFPB decides against any request from a property owner, a letter will be issued informing the property owner that they have 30 days to remove the items.

There are 32 properties located along the Calaveras River (west of I-5, south bank) that have encroachment or maintenance deficiencies. To date, the CVFPB has taken no action in resolving those encroachment and maintenance deficiencies. On November 23, 2009, Tom Flinn (Public Works Director, San Joaquin County Flood Control and Water Conservation District) mailed a letter to the CVFPB thanking them for beginning actions along Bear Creek, and inquiring when action would be taken along the Calaveras River. There are approximately 12,000 parcels affected by the encroachment and maintenance deficiencies along the Calaveras River.

Chris Neudeck concluded the presentation with an update on the RD's. He reported that RD 17's (Weston Ranch) PAL expired in August 2009. FEMA and the U.S. Army Corps of Engineers have different guidelines. RD 17 believes they still meet FEMA's 100-year flood protection. RD 17 undertook financing, initial design work and construction in order to get the projects underway. RD 17 met with Kathy Schaefer (FEMA) in August 2009 to discuss FEMA's intentions on the certification of their levees. A letter was received from FEMA; however, it differed from the verbal conversation held with Ms. Schaefer. FEMA's letter stated they will not recertify the levee based on the underseepage problem. Ms. Schaefer stated RD 17 needs to resubmit the certification documentation from their 1990 application in order for FEMA to recertify the levee. RD 17 has gathered the subsequent information, additional studies, construction and maintenance reports, and an engineer's endorsement. RD 17 is planning to turn in all of the requested documentation by the end of 2009, anticipating FEMA's recertification.

Mr. Neudeck stated RD 17 is within weeks from receiving an Early Implementation Program grant from the Department of Water Resources (DWR) in the amount of \$62 million. The grant funding would allow RD 17 to continue and complete the underseepage and through seepage repairs. This would not only meet FEMA's criteria, but also the U.S. Army Corps of Engineers' criteria. It will take approximately 2 years to complete the work due to the need of a full environmental impact report and additional regulatory requirements.

RD 17 recognizes they are in a holding pattern. FEMA understands that RD 17 will resubmit the previously submitted documentation. Ms. Schaefer indicated that as long as the requested documentation is resubmitted with an engineer's endorsement, FEMA will certify RD 17's levee.

Mr. Neudeck reported that RD 403 (Port of Stockton) has not received a response from FEMA on their package submittal. RD 403 also followed up with Ms. Schaefer who indicated FEMA is near to certifying RD 403's levee.

RD 404 (Boggs Tract) is bisected by Highway 4 with Port of Stockton facilities contained within it. RD 404's levee has seepage problems similar to RD 17; however, RD 404 does not have a certifying document and has never done repairs. RD 404's development is considered to be in "grandfathered condition", assuming the levee is certifiable. The levee itself has performed well over the years; however, it does have a significant seepage problem. A study undertaken by DWR indicates the areas needing

the most repairs are located upstream of Highway 4. There are additional areas located downstream of Highway 4 that need repair, but DWR has not recognized them.

KSN has worked with RD 404 to obtain financing for a Proposition 218 election and to guide Mr. Rosten, the district's Engineer, towards a project. A 218 election provides approximately \$500,000 annually from property owners. Unbeknownst to RD 404, DWR has come up with a federal stimulus fund project. Beginning December 7, 2009, a coordination meeting will be held every two weeks to discuss planning. RD 404 will not meet their PAL expiration date of March 2010, but a good part of the work is expected to be completed by the expiration date. The work is scheduled to be completed in Fall 2010. It should be noted that even though the State's schedule shows completion by 2010, normally a federal project would likely take 7 to 10 years to complete.

RD 2115 (Shima Tract) was the first PAL submitted to FEMA. RD 2115 believes they have answered all of FEMA's questions. RD 2115 will likely be the first to be certified by FEMA.

RD 2126 (Atlas Tract) is certifying the dry-land levee of its eastern boundary. Trinity Parkway to the north along the Spanos' development will eventually extend across the new bridge over Bear Creek and down the dry-land levee. The dry-land levee was moved approximately two weeks ago to the west. The documentation is ready to be submitted to FEMA as a Letter of Map Revision. Although the submittal will only be for the dry-land levee, it will be attached to the original Letter of Map Revision for the RD 2126 levees to the west and amended. RD 2126 dry-land levee provides flood protection to the western side of Twin Creeks.

In closing, Mr. Churchwell stated in addition to all the levee work FEMA certification requires, the area behind the levee needs to be analyzed. This is referred to as internal drainage. In order to keep small areas located behind the levees from going into a floodplain, new or larger pumps may be needed.

Steve Winkler commented that the geotechnical stability of the Calaveras River has been questioned previously. He stated DWR started a study, but DWR was unable to complete it due to funding issues. Mr. Winkler asked if there was an update on this.

Mr. Churchwell replied that Kleinfelder, Inc. completed a thorough analysis of DWR's existing findings. As mentioned previously, the only known area with potential geotechnical stability problems is at El Dorado/Bianchi.

#### SJAFCA Web Site

A presentation was conducted by Marlo Duncan. SJAFCA introduced their brand new web site ([www.sjafca.com](http://www.sjafca.com)). SJAFCA worked with a local web developer by the name of AgriDesigns. AgriDesigns designed the web site and will continue to work with SJAFCA to add additional content.

The owner of AgriDesigns (Jennifer Waddle) will add additional maps using a Google Earth feature. The Google Earth feature will allow users to zoom in from an aerial viewpoint to the location of various SJAFCA projects. Also viewable will be SJAFCA's latest agenda packets, minutes, staff reports, and board resolutions.

By making this information available on the internet, staff cuts costs by eliminating the need to print the full agenda packet for distribution to interested parties. The documents can be conveniently downloaded from the internet and users can print the documents they want.

SJAFCA has increased its activities and felt a web site would be a valuable resource. It will be a great way to share information and help keep the communication channels open with our local partners and other agencies. Ms. Duncan concluded the presentation by noting that anyone can contact SJAFCA through the web site by simply sending an email that would be received in real time for prompt response by staff.

Director Lowery commended SJAFCA on their web site. She stated the information was precise and centrally located for users. She felt the web site would be a good resource in keeping everyone informed and to utilize it as a resource manual for all of SJAFCA's information.

### **ORAL REPORT**

Executive Director Giottonini reported on October 28, 2009, the President signed the fiscal year (FY) 2010 Energy and Water Development Appropriations Act. The Act includes \$897,000 for the Lower San Joaquin River Feasibility Study and \$484,000 to SJAFCA for reimbursement. These are marked increases for the Lower San Joaquin River Feasibility Study and the first reimbursement in several years for SJAFCA. Executive Director Giottonini thanked the Board for their lobbying efforts in Washington, D.C.

On October 27, 2009, SJAFCA and San Joaquin County delegates met with Steve Stockton, Director of Civil Works, U.S. Army Corps of Engineers' Headquarters at the California Water Conference in Sacramento. As a result, Representatives Cardoza and McNERNEY will send follow-up letters to the Office of Management and Budget and the Assistant Secretary asking for full capability funding of \$2 million for the U.S. Army Corps of Engineers' Lower San Joaquin River Feasibility Study in the FY 2011 budget.

In addition, the Water Resources Development Act is being looked at again. As previously noted, SJAFCA has requested that budget priority be given to constructed projects, the Section 408 permitting process be streamlined, and that Section 104 crediting is given for advanced work.

### **WRITTEN COMMUNICATION**

None.

## **PUBLIC COMMENTS**

None.

## **BOARD QUESTIONS, COMMENTS, ACTIONS**

Director Fritchen thanked staff for the chronological information provided on the Twin Creeks staff report. He commented that the information was useful and informative.

The meeting adjourned. The next meeting is scheduled for January 20, 2010, at 10:00 a.m.



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JAMES B. GIOTTONINI  
Executive Director/Secretary  
San Joaquin Area Flood Control Agency

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# **Agenda Item 5.1**

January 20, 2010

TO: San Joaquin Area Flood Control Agency

FROM: James B. Giottonini, Executive Director

SUBJECT: **RESOLUTION APPOINTING A CHAIRPERSON AND VICE-CHAIRPERSON FOR THE SJAFCA BOARD OF DIRECTORS**

### RECOMMENDATION

It is recommended that the Board of Directors of the San Joaquin Area Flood Control Agency approve and adopt a SJAFCA resolution appointing a Chairperson and Vice-Chairperson for the SJAFCA Board of Directors.

### DISCUSSION

#### Background

SJAFCA Bylaws adopted May 25, 1995, state the Board of Directors shall be presided over by the Chairperson who shall be a member of the Board elected among its members. In the absence of the Chairperson, the Board shall be presided over by a Vice-Chairperson elected from among the members. In addition, the Bylaws state the Chairperson and the Vice-Chairperson shall hold office for a period of one year commencing July 1 of each fiscal year.

On November 6, 1996, the Bylaws were amended to change the term of office of the Chairperson and the Vice-Chairperson. The new term (March 1 through February 28) was needed to accommodate the results of local elections and subsequent appointments to the SJAFCA Board by each elected body. The amendment also provided the Board with the power to establish by resolution a different commencement date for the term of office of the Chairperson and the Vice-Chairperson.

On May 20, 2009, the Board adopted a resolution to change again the commencement date for the annual term of office of the Chairperson and the Vice-Chairperson. The new term commences each year at the first meeting of the Board as soon as the Chairperson and the Vice-Chairperson are appointed. The implementation of this change started with the 2009 term of Chairperson, Supervisor Frank L. Ruhstaller and Vice-Chairperson, Councilmember Diana Lowery.

#### Present Situation

Both the Chairperson and the Vice-Chairperson are appointed at the first meeting of the

January 20, 2010

**RESOLUTION APPOINTING A CHAIRPERSON AND VICE-CHAIRPERSON FOR THE  
SJAFCA BOARD OF DIRECTORS** (Page 2)

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Board from among its members. The Chairperson and the Vice-Chairperson will hold office for one year from the date of their respective appointment until the first Board meeting of the following year. It is recommended that the Chairperson and the Vice-Chairperson be appointed at this meeting.

PREPARED BY: Juan J. Neira



APPROVED:  
JAMES B. GIOTTONINI  
EXECUTIVE DIRECTOR

JBG:JJN:cl

# **Agenda Item 5.2**

January 20, 2010

TO: San Joaquin Area Flood Control Agency

FROM: James B. Giottonini, Executive Director

SUBJECT: **SAN JOAQUIN AREA FLOOD CONTROL AGENCY LEGAL SUPPORT SERVICES**

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### RECOMMENDATION

It is recommended that the Board of Directors of the San Joaquin Area Flood Control Agency adopt a resolution authorizing the Executive Director to sign an Engagement Letter with Downey Brand to provide legal services for the Agency.

### DISCUSSION

#### Background

In the past SJAFCA has utilized legal services from Downey Brand, and more specifically, Mr. Scott Shapiro. Mr. Shapiro has supported SJAFCA efforts in the past and has been available to provide support on an as needed basis. With the increased involvement with State and Federal issues it has become evident that a more structured and defined ongoing engagement is needed.

#### Present Situation

SJAFCA continues to work through many challenging and dynamic flood control issues, including policies and procedures. These issues can be specific to a Joint Powers Authority (JPA) or related to State or Federal legislation dictating policy and procedures that impact flood control requirements. State and Federal agencies are required not only to interpret new legislation but also to implement. Mr. Shapiro is heavily engaged in flood control issues and continues to support flood control agencies including JPAs similar to SJAFCA (see Attachment for information on experience). With the current complexity of flood control issues facing SJAFCA, it is imperative that legal services be available from someone who has an extensive background in dealing with JPA specific concerns and who is actively engaged in relevant flood control issues. As indicated in Attachment 1, Downey Brand can provide the level of expertise needed.

The estimated monthly cost for general counsel is \$6,000 with Mr. Shapiro's 2009 charge rate of \$355 per hour and his associates' rates of \$200 to \$300 per hour.

An amount of \$50,000 was allocated in SJAFCA's 2009-2010 operating budget for the purpose of general legal counsel. To date, only \$5,003.42 has been expended for legal counsel; therefore, sufficient funds are available to secure Mr. Shapiro's services beginning in February 2010.

January 20, 2009

**SAN JOAQUIN AREA FLOOD CONTROL AGENCY LEGAL SUPPORT SERVICES**

(Page 2)

It is recommended the Board authorize the Executive Director to sign an Engagement Letter with Downey Brand to provide legal services for the Agency.

PREPARED BY: Roger Churchwell



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APPROVED  
JAMES B. GIOTTONINI  
EXECUTIVE DIRECTOR

JBG:RC:md

Attachment

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December 10, 2009

**VIA E-MAIL**

James B. Giottonini, Executive Director  
San Joaquin Area Flood Control Agency  
22 E. Weber Avenue  
Suite 301  
Stockton, CA 9520-22317

Re: Potential Representation by Downey Brand LLP of San Joaquin Area Flood Control Agency

Dear Mr. Giottonini:

Thank you for the opportunity to discuss with you the possibility of San Joaquin Area Flood Control Agency (SJAFCA) retaining Downey Brand to represent SJAFCA as General Counsel. The purpose of this letter is to highlight our experience and background as well as to provide to you the details that would be associated with the engagement.

**Our Experience**

While many other firms can speak only in generalities about their flood management representation, we can speak about specifics. As you know, there are currently five joint powers agencies (JPAs) working on flood management in the Central Valley; we are working with the other four in roles which could become models for the services we could provide to SJAFCA.

I am currently General Counsel for the Three Rivers Levee Improvement Authority. Three Rivers is engaged in a \$400 million levee improvement project based primarily upon levee upgrades and the construction of setback levees. Along with other attorneys at my firm I have provided legal services to assist Three Rivers with permitting, financing, strategizing, a Proposition 218 election, as well as traditional General Counsel duties such as contract review and Brown Act compliance.

I am also currently General Counsel for the Sutter Butte Flood Control Agency (SBFCA). Like Three Rivers, SBFCA is pursuing an Early Implementation Project (EIP) involving State grant funds. However, unlike Three Rivers, SBFCA is in its early existence. Also, unlike Three Rivers, SBFCA is pursuing a Federally authorized and constructed project. Therefore, along with other attorneys at my firm our work has focused significantly on Federal and State cost sharing agreements and other issues related to pursuing Federal authorization. Our work has also

included the traditional contract review and Brown Act duties and pursuit of a Proposition 218 election.

I act as Special Counsel to the Sacramento Area Flood Control Agency (SAFCA). SAFCA is pursuing a multi-billion dollar program that includes levee upgrades and reservoir modifications. Because SAFCA has a full time General Counsel, my duties for SAFCA focus primarily on special projects such as negotiating and obtaining funding agreements with the State, seeking credit from the Army Corps of Engineers for work performed by SAFCA, assisting with environmental issues, assisting with property acquisitions, managing relations with the Tribal community, representing SAFCA before the Central Valley Flood Protection Board, and other special issues.

I also currently act as Co-Program Manager for the West Sacramento Area Flood Control Agency's (WSAFCA) effort to pursue both an EIP as well as Federal authorization. In this role I function less as a legal advisor and more as a manager and strategist for ensuring that WSAFCA's program continues to move ahead on the fastest timeline and at the lowest cost. In this role I have the unique opportunity to understand what services are required from Counsel so that the project has the best chance of success.

In addition to this work, I am General Counsel for the California Central Valley Flood Control Association and more than a dozen reclamation districts. I am also the editor and chief of the Floodplain Management and Liabilities Reporter, a national monthly publication that reports on all of the latest developments in floodplain management. Finally, along with my partners at Downey Brand we represent dozens of additional flood management agencies.

I believe that this experience makes Downey Brand uniquely suited to be General Counsel for SJAFCA. Further, the representation of the other JPAs does not create a potential for conflict with representation of SJAFCA as the other JPAs are located in a different watershed.

### **Engagement Letter**

Should the SJAFCA Board elect to retain Downey Brand, this letter also confirms the general nature of the legal services we will be providing, our respective responsibilities, and the manner in which we will charge you for our fees and out-of-pocket

Downey Brand does not enter into engagement agreements for a fixed sum for General Counsel duties. Rather, we charge on an hourly basis and seek to minimize costs by staffing each issue with the lowest cost attorney who can provide the excellent service required. While we cannot know what costs would be charged to SJAFCA if Downey Brand was retained as General Counsel without understanding the specific projects we would be involved with, we estimate that for the first year a monthly budget of \$6,000 should create the flexibility necessary to allow Downey Brand to add value in any initiative of the Agency. I currently charge at the rate of \$355 per hour, although our rates are subject to increase at the beginning of the calendar year. My associates' rates range from \$200 to \$300.

In conjunction with beginning work on your matter, we will not require a retainer from you.

We charge in six-minute units of time with a minimum of twelve minutes billed at one time, and we bill for travel, legal research and analysis, court waiting time, review of documents, drafting of documents, personal and telephone conferences within and without our office, as well as attendance at and preparation for court appearances, depositions and meetings and preparation of pleadings, motions, declarations, responses and other court papers, investigation, and negotiation.

In addition, we will charge you for our out-of-pocket costs. These include mileage, photocopying, telecopying, telephone charges, parking, and postage, including Federal Express, Express Mail, Overnight Express, UPS, delivery and messenger service. We will also charge you for travel and lodging, at reasonable business rates, and for meal costs where appropriate. We will use our best efforts to obtain the best available rates for travel and lodging.

We will bill you on a monthly basis, and our bills are due and payable upon presentation. Our bills will clearly state the date of each service, the name and hourly rate of the professional performing the service, the service performed, and the number of hours (or portions of hours) devoted to each item. Our out-of-pocket costs will be itemized. Please be sure to ask if you have any questions at any time about our bills or about the conduct of your matter.

If you agree to the terms of this letter and wish for us to begin our representation, please sign this letter and return it to me via facsimile. This will signify your agreement to and acceptance of the terms of our engagement set forth in this letter.

Our overall aim is to work with you in a cooperative effort to achieve the best possible result consistent with your business objectives and to provide the most cost-effective legal services possible given the circumstances of your particular matter. We will be checking with you periodically to be sure that we are meeting your needs and expectations.

Very truly yours,

DOWNEY BRAND LLP



Scott L. Shapiro

**AGREED, ACCEPTED, and CONSENTED:**

**San Joaquin Area Flood Control Agency**

By: \_\_\_\_\_  
James B. Giottonini

Dated: \_\_\_\_\_