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**OFFICE OF THE
CITY ATTORNEY**

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CITY ATTORNEY

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**CITY OF SACRAMENTO
CALIFORNIA**

June 1, 1990

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**Budget & Finance Committee
Sacramento, California**

**SUBJECT: Sacramento Area Flood Control Agency Request For Special
Counsel From City Attorney's Office - Resolution Amending
Inter-Agency Agreement with SAFCA - Request to Amend the
1990-91 Proposed Budget**

Honorable Members in Session:

SUMMARY

The Sacramento Area Flood Control Agency (SAFCA) requested, on May 24, 1990, that a Deputy City Attorney from the Sacramento City Attorney's Office be assigned to SAFCA on a month-to-month basis for a period not to exceed one year for the purpose of working on environmental issues associated with the American River Watershed Investigation. This assignment would commence on July 1, 1990. An amendment to the inter-agency agreement with SAFCA has been prepared and a resolution approving this amendment is attached. We also attach a copy of the report from William Edgar, Executive Director of SAFCA to the Governing Board of SAFCA relating to this subject.

The City Attorney requests that the 1990-91 Proposed Budget be amended to add 1.0 FTE Deputy City Attorney.

The City Attorney also requests authority to immediately begin recruitment for the Deputy City Attorney to be assigned to SAFCA to begin July 1, 1990.

BACKGROUND

The attached report from Bill Edgar indicates the need for additional assistance at SAFCA in the environmental area with regard to the American River Watershed Investigation. This investigation includes the study of Auburn Dam alternatives, reauthorization of Folsom, and the raising of levees in the Natomas area. It is a very

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complex document which must be able to withstand critical scrutiny as much as possible. On May 24, 1990, the SAFCA Board approved the request for this additional assistance. Mayor Anne Rudin and Councilmembers Lynn Robie and Heather Fargo serve on this Board and voted to approve this request. The assignment of Deputy City Attorney Tim Washburn to SAFCA is to be on a month-to-month basis for not to exceed one year. It is probable that the minimum time for assignment will be six months.

The conditions of this assignment would be as follows: (1) The attorney would remain a City employee; (2) His position would still be reflected within the City Attorney's Office; and (3) SAFCA will reimburse the City for all employee salary and benefit costs.

There is a tremendous need for additional legal service in the Public Works area, which is the area of Deputy City Attorney Washburn's assignment. We do not want the proposed action to impact negatively on the City Attorney's budget request for additional legal assistance. The request which we made in March 1990 was for legal assistance in areas other than the Public Works assignment. These areas included code enforcement, environmental, planning, police and drug house abatement. Thus, by filling this request from SAFCA, we are not gaining ground to meet the legal needs which we stated in our budget request. It is very possible that the attorney assigned to SAFCA would not come back to our office in six months or, perhaps, even a much longer period. However, even if he does come back in six months, we may have a vacancy in which case he would fill that vacancy, or we may have to carry him as an additional position until a vacancy occurs. With the great increase in the need for additional legal service, we will certainly have sufficient work to keep him busy.

FINANCIAL DATA

All costs incurred by the City Attorney's Office while the Deputy City Attorney is assigned to SAFCA would be paid by SAFCA.

The City and County each contribute 50% of the costs for SAFCA. The City's costs are paid from the Storm Drainage Fund. This request will increase the City's contribution for fiscal year 1990-91 by approximately \$15,000 (assuming a six-month assignment).

When the assignment to SAFCA ends, the position will return to the City Attorney's Office and would then be paid by the General Fund. Assuming a six-month assignment to SAFCA, the General Fund cost would be about \$30,000. This figure may be higher or lower depending upon the length of the assignment.

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POLICY CONSIDERATIONS

There is a policy consideration relating to whether additional staff members should be assigned to SAFCA. However, the environmental aspects of the American River Watershed study are very complex and important, and I am informed that there is no one else to do the work necessary to assure that the environmental aspects are studied and addressed in the manner in which they should be for this important EIR.

The fiscal implications are also uncertain to the extent that we do not know when this assignment will end.

MBE/WBE

None

RECOMMENDATION

Staff requests that the Committee approve and recommend to the Council approval of the attached resolution amending the inter-agency agreement. We also ask that the Committee recommend that the Council amend the 1990-91 Proposed Budget for the City Attorney's Office by adding 1.0 FTE Deputy City Attorney II.


Respectfully submitted,


JAMES P. JACKSON, City Attorney

Concur,


WILLIAM H. EDGAR
Executive Director, SAFCA

RECOMMENDATION APPROVED:


JACK CRIST
Deputy City Manager

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Request For Special Counsel From
City Attorney's Office**

June 1, 1990

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Contact Person to
Answer Questions:

JAMES P. JACKSON,
City Attorney
449-5346

Budget & Finance Committee
June 5, 1990
All Districts

SACRAMENTO AREA FLOOD CONTROL AGENCY

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FOR AGENDA OF: May 24, 1990

TO: Sacramento Area Flood Control Agency
Board of Directors

FROM: William H. Edgar
Executive Director

SUBJECT: APPROVAL FOR ADDITIONAL SPECIAL COUNSEL FOR
ENVIRONMENTAL ANALYSIS RELATING TO THE AMERICAN RIVER
INVESTIGATION FEASIBILITY STUDY

SUMMARY

On the December 14, 1989, the Board approved the plan for providing Agency counsel services. The plan identified the Sacramento County Counsel's office as the lead office in coordinating legal activities with the other parent entities' legal staffs. In addition, the plan permitted the use of special counsel for particular projects on an as needed basis.

Staff is presently reviewing the U.S. Army Corps of Engineers' American River Watershed Investigation preliminary draft feasibility report and related environmental documents. It has become increasingly evident that additional assistance will be needed to review the environmental analysis particularly as it relates to the secondary impacts of project. Therefore, staff is recommending that additional legal services be obtained from the Sacramento City Attorney's office and a law firm specializing in environmental law be retained.

BACKGROUND/FINANCIAL DATA

On December 14, 1989, the Board formalized the process by which SAFCA obtains legal services. The plan identified Michele Bach, Supervising Deputy Counsel from Sacramento County, as the "lead counsel." The plan has worked well and efficiently. Bach has taken the responsibility for advising the staff and SAFCA Board on the day-to-day legal activities. In addition, she has played an active role in the issuance of the 1990 SAFCA Notes (bridge loan), the conflict of interest code formulation, drafting of the special legislation, contract review, etc.

During the last several months, staff has been involved with the review of the environmental work pertaining to the American River Watershed Investigation. The issues such as (1) the replacement of fish and wildlife habitat, (2) the protection of endangered species, (3) the preservation of jurisdictional wetlands, (4) the mitigation of adverse air quality induced by the growth of the area and (5) the preservation of cultural resources will have a tremendous impact on the future land use decisions of Sacramento County, Sutter County and Sacramento City. Staff has been meeting weekly with the Corps and the State to determine the direct and indirect impacts of the proposed project. It is staff's opinion that the strategy and approach utilized by the Corps will have a direct and significant impact on land use decisions for the rest of the century.

Because of these concerns, staff is recommending the following:

- (1) The Executive Director negotiate and finalize an arrangement with the Sacramento City Attorney to have a Deputy City Attorney assigned to SAFCA on a month to month basis for a period of time not to exceed one year for purposes of working on these environmental issues. This would be contingent upon the availability of funds, and be included in the upcoming budget for the 1990-91 Fiscal Year.
- (2) The legal office of all of the parent entities be requested to assist in the selection of a Special Counsel to advise the staff and the Board regarding the environmental legal issues related to the project. The purpose of retaining this specialized legal assistance in environmental issues is to help oversee all of SAFCA's efforts in the review process. The cost of this service will be determined in the review process and will be included in the 1990-91 Budget.

POLICY IMPLICATIONS:

The actions recommended are consistent with the plan adopted by the Board on December 14, 1989.

RECOMMENDATION:

Staff recommends that the Board approve the attached resolution authorizing staff (1) to secure the assistance of an attorney from the City of Sacramento and (2) to secure the services of a law firm specializing in environmental law.

Respectfully Submitted

William H. Edgar

WILLIAM H. EDGAR
Executive Director

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RESOLUTION NO.

Adopted by the Sacramento Area Flood Control Agency on Date of

SPECIAL COUNSEL FOR ENVIRONMENTAL ANALYSIS

BE IT RESOLVED BY THE SACRAMENTO AREA FLOOD CONTROL AGENCY BOARD OF DIRECTORS:

1. The Executive Director is authorized to negotiate and finalize an arrangement with the Sacramento City Attorney to have a Deputy City Attorney assigned to SAFCA on a month to month basis for a period not to exceed one year for purposes of working on environmental issues associated with the American River Watershed Investigation.

2. The Executive Director is authorized to request the assistance of the legal office of all the parent entities to select and obtain Special Counsel regarding the environmental legal issues related to the American River Watershed Investigation study.

CHAIRMAN

ATTEST:

SECRETARY

C:WP50\SAFCA\LEGAL.RES

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

**RESOLUTION AMENDING INTER-AGENCY AGREEMENT
FOR THE SACRAMENTO AREA FLOOD CONTROL
AGENCY**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

That the Inter-agency Agreement for the Sacramento Area Flood Control Agency, dated December 12, 1989, is hereby amended to add in the third paragraph of Section 2 of said agreement, after the third sentence, the following:

Timothy N. Washburn, an employee of CITY, has been designated as special counsel on environmental matters relating to the American River Investigation Feasibility Study for a maximum of one year commencing July 1, 1990.

In all other respects, the inter-agency agreement shall remain unchanged.

The Mayor and City Clerk are authorized to execute the amendment agreement on behalf or of the City of Sacramento.

DATE ENACTED:

DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____