

DATE: July 18, 2019

TO: WCA Governing Board

FROM: Deborah Enos, Project Manager

THROUGH: Mark Stanley, Executive Officer

SUBJECT: Item 14: Consideration of a resolution to enter into a funding source stabilization revenue agreement with the Rivers and Mountains Conservancy.

RECOMMENDATION: That the Watershed Conservation Authority (WCA) Governing Board approve entering into a Subvention Agreement with the Rivers and Mountains Conservancy (RMC) up to a not-to-exceed value of \$1,500,000.

PROJECT DESCRIPTION: A Subvention Agreement (Exhibit A) with the RMC shall provide a non-wasting source of funding to support the Authority in developing and constructing projects in the Lower Los Angeles and San Gabriel River watersheds. The subvention aid will be held in a separate fund with the County of Los Angeles Auditor-Controller, WCA's fiscal agent, for the sole purpose of a perpetual revolving, non-wasting cash fund to support the Authority while awaiting reimbursements from various grantors. The subvention agreement establishes that WCA shall meet requirements that include, but not limited to, a quarterly performance evaluation of the fund activities through reconciliation reporting. Annually the WCA and RMC will be evaluated the subvention aid to determine if it is meeting its required intent.

The intention of the Subvention aid is to create a stable financial environment for the WCA in meeting its expenditure obligations reimbursable bond and grant funded projects to effectively and efficiently manage project implementation and construction and meet WCA requirements set forth in third party contracts.

BACKGROUND: The WCA is funded primarily by grants and receives limited funding from JPA Partner contributions (San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy and LA County Flood Control District) and lease revenues for operational expenses. The JPA agreement and fiscal methods employed by the Authority's Fiscal Agent, the Los Angeles County Auditor Controllers Officer, limits the Authority to operating within the confines of a strictly cash position. Additionally, the Authority does not have the power to acquire/raise revenues or incur debt through taxation, assessment, and/or levy of any kind, further restricting its access to limited available funding sources on hand that taxes the Authority's cash position when having to operate in a reimbursement only environment that certain granting entities require.

This fiscal year, with both the Duck Farm and Parque Dos Rios will be in construction, the project and operational funds on hand will not be sufficient to provide stable, sustainable, cash flow environment. It is anticipated that project expenditures will reach \$6,000,000 or more over the next seven to nine months alone. The start of the negative cash flow position is anticipated to occur by August 2019, with the largest anticipated cash flow gap of approximately \$1.4 million occurring sometime near November 2019.

Future need for cash flow support, will not cease with the completion of the Duck Farm and Parque Dos Rios park projects. By Spring/Summer 2020, new multimillion-dollar construction projects including the Azusa River Wilderness Park, Duck Farm River Center expansion and the East Fork Access Point improvement projects will come on-line and will require similar cash flow support in future fiscal years. Therefore, WCA staff will meet with the RMC in the last quarter of 2019 to review whether the Subvention fund needs to renew or revised. Staff will recognize the extension of the agreement and funding as part of the Authority's annual Fiscal Year budget approval process.

Additionally, staff will work with its JPA partners. RMC and LACFCD, to research other self-sustaining avenues to reduce the strain on its' available operational funds in continuing to forward projects for the public benefit while reducing administrative pressures.

FISCAL INFORMATION: This Subvention Agreement will make available up to \$1,500,000 to meet expenditure obligations reimbursable by bond and grants while awaiting reimbursement from various grantors to forward implementation and construction projects.

This non-wasting fund agreement will be for FY2019-20 and may be extended for future fiscal years based on justification of need. The Subvention fund is non-wasting and will be replenished by reimbursement payments as received from various grants and contracts. Initial funding of \$750,000 is anticipated within 30 days of the execution of the agreement. The second payment of \$750,000 is anticipated to be initiated within the next 60 days of the first disbursement. This agreement is subject to the availability of funds from the State and its processes.

SUBVENTION AGREEMENT

THIS SUBVENTION AGREEMENT (this “Agreement”) is made as of _____, 2019, between the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (the “Conservancy”) and Watershed Conservation Authority (the “Authority”), with reference to the following facts, purposes, and understandings.

RECITALS

- A. The Conservancy was established in 1999 to acquire and manage public lands within the Lower Los Angeles River and San Gabriel River watersheds, and to provide open space, low impact recreational and education uses, water conservation, watershed improvement, wildlife and habitat restoration and protection.
- B. The Authority was established in 2003 pursuant to the Joint Excise of Powers Act under Government Code, Section 6500, et. seq. It is a local public entity of the State of California exercising joint powers of the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (Conservancy) and the Los Angeles County Flood Control District (District). The role of the Authority is to facilitate the development and implementation of a comprehensive program to improve open space and recreational opportunities within the San Gabriel and Lower Los Angeles River Watersheds that are consistent with the goals of flood protection, water supply, groundwater recharge, and water conservation. The Authority is also empowered to acquire and protect lands for watershed protection, conservation, natural open space, and recreational purposes.
- C. The Authority is funded primarily by grants and receives limited funding from JPA Partner contributions and lease revenues for operational expenses. The Authority is limited to operating within the confines of a strictly cash position with Los Angeles County Auditor Controller’s Office serving as the Authority’s fiscal agent. The inability to temporarily borrow funds or carry a short-term negative fund balance while awaiting reimbursement from grants is adversely affecting project delivery capacity.
- D. The Authority is a critical element to the watersheds of the Lower Los Angeles River and San Gabriel River, and the Conservancy’s willingness to continue to the financial feasibility of the Authority is based on current and future construction projects to support the watersheds and the public benefits resulting therefrom such as passive recreational activity, habitat restoration, and open space and art elements.

NOW, THEREFORE, in reference to the foregoing Recitals in consideration of the promises, covenants and agreements set forth in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledge, the Conservancy and the Authority hereby agree as follows:

**ARTICLE I.
DEFINITIONS**

Section 1.1. Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words shall have the following meanings:

“Account” as used herein means the cash account or fund in which the disbursements of the Subvention aid are held in with the Fiscal Agent.

“Agreement” shall mean this Subvention Agreement.

“Authority” as used herein means the Watershed Conservation Authority (WCA), and may be used interchangeably herein.

“Conservancy” as used herein means the San Gabriel & Lower Los Angeles Rivers and Mountains Conservancy (RMC) and may be used interchangeably herein.

“District” as used herein means the Los Angeles County Flood Control District, a joint powers authority member of the Watershed Conservation Authority.

"Effective Date" shall mean the latter of the date this Agreement is executed by the Conservancy or the date the Conservancy Governing Board approves and executes this Agreement.

“Executive Officer” as used herein means the person authorized by the State to operate, administer, and manage the San Gabriel & Lower Los Angeles Rivers and Mountains Conservancy.

“Fiscal Agent” as used herein means the Los Angeles County Auditor Controller’s Office, whereas all of the Watershed Conservation Authority’s funds are held and managed.

"Schedule of Performance" shall mean the schedule of quarterly performance reviews attached to this Agreement as Exhibit B, setting out the dates and/or time periods by

which certain obligations set forth in this Agreement, including reconciliation reports, must be accomplished. The Schedule of Performance is subject to revision from time to time as mutually agreed upon by the Executive Officer and the Authority's Board Chair.

"State" as used herein means the San Gabriel & Lower Los Angeles Rivers and Mountains Conservancy (Conservancy), and may be used interchangeably herein.

"Subvention Aid or Amount" shall mean the cumulative amount of Subvention Payments received by the Authority pursuant to this Agreement, which is no more than One Million and Five Hundred Thousand Dollars (\$1,500,000).

Section 1.2. Exhibits. The following exhibits are attached to and incorporated into this Agreement:

- Exhibit A: Joint Powers Agreement and Amendment
- Exhibit B: Schedule of Performance

ARTICLE 2. POLICIES AND PURPOSES

Section 2.1. Recitals. The Recitals are true and correct and are hereby incorporated by this reference.

Section 2.2. Common Powers. In accordance to Section 2.0 the Watershed Conservation Authority Joint Exercises of Powers Agreement (Exhibit A), the parties agree to exercise their common powers to the maximum extent thereof for the purposes of implementing this agreement, including but not limited to, all of the powers specified in Joint Exercise Powers Act, codified in Chapter 5 of Division 7 of Title 1 of the Government Code (commencing with § 6500).

2.2.1 Additionally, the Authority has no power to raise revenues and/or incur debt through taxation, assessment and/or levy of any kind.

2.2.2 To the extent funds are legally available, the Conservancy is authorized to make payments and contributions of public funds, as provided in Section 6504 of the Government Code.

Section 2.3. Public Benefit. By Authorizing the Conservancy to enter into this Agreement, the benefits accruing as a result of the transactions completed by this Agreement, including, without limitation, (i) direct benefits such as revenues from the Projects and increased revenues from property, parking, business, utility, (ii) the enhanced economic opportunities for business surrounding the projects and in the Lower Los Angeles and San Gabriel River watersheds, and (iii) the benefits such as revitalization of the Lower Los Angeles River together with the Authority's obligations under this Agreement, represent fair consideration for all of the obligations to be understood by the Conservancy as contemplated by this Agreement.

ARTICLE 3. FINANCIAL ASSISTANCE BY RMC

Section 3.1. Subvention Aid. To assist the Authority in developing and constructing projects in the Lower Los Angeles and San Gabriel River watersheds and subject to the terms and conditions of this Agreement, the RMC shall provide aid of a not to exceed amount of One Million and Five Hundred Thousand Dollars (\$1,500,000).

Section 3.2 Disbursement of Funds. The Authority shall receive two lump sum payments of Seven Hundred and Fifty Thousand Dollars (\$750,000.00). The first payment shall be initiated within thirty (30) days of the Effective Date. The second payment shall be initiated within sixty (60) days of the Effective Date. Amounts are subject to the availability of funds through normal State processes. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the federal government, or any loss of tax-free status on state bonds, pursuant to any federal statute or regulation.

3.2.1 Any and all money disbursed to the Authority under this Agreement shall be deposited in a separate account for the sole purpose of the aid, setting up and identifying such account prior any disbursements.

3.2.2 Any interest earned on the aid may be retained and expended for the same purposes under this Agreement. A report of any accrued interest must be submitted to the Conservancy, at minimum, a quarterly basis.

Section 3.3 Fiscal Control Provisions. The Authority will provide a reconciliation report, a fund balance report, and any other relevant documentation to the Conservancy to document

the performance of the Subvention aid, in accordance to Exhibit B Schedule of Performance. The Conservancy reserves the right to require reports more frequently than on a quarterly basis if necessary, but no more than once a month.

Upon reconciliation, the Authority must detail the eligible items, unit rates, and extended total amounts for each line item. Among other matters, the following information should be documented:

- a. Identify and justify direct costs. Indirect, administration, and overhead costs, including employee fringe benefits, are not allowable under this Agreement;
- b. Monthly, weekly, or hourly rates as appropriate and personnel classifications should be specified, together with the percentage of personnel time to be charged to the contract, when salaries and wages are a reimbursable item;
- c. The rates of travel reimbursement for necessary traveling expense and per diem shall be set in accordance with the rates of CalHR for comparable classes and that no travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the Conservancy.
- d. Payments are not permitted for construction, renovation, alteration, improvement, or repair of privately-owned property when such work would enhance the value of the property to the benefit of the owner or the Authority.
- e. The contract should require prior authorization in writing by the agency before the contractor will be reimbursed for any purchase order or subcontract exceeding \$2,500 for any articles, supplies, equipment, or services. The contract should also require the contractor to provide in its request for authorization all particulars necessary for evaluation of the necessity or desirability of incurring such cost and the reasonableness of the price or cost. Three competitive quotations should be submitted, or adequate justification provided for the absence of bidding.

3.3.1 The Authority shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. The Authority shall keep complete and accurate records of all receipts and disbursements on expenditures of such funds.

- 3.3.2** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Agreement. Failure or refusal by the Authority to comply with this provision shall be considered a breach of this Agreement, and the State may any action it deems necessary to protect its interests, up to and including the immediate return of all funds and any accrued interests to the Conservancy disbursed under this Agreement and termination of the Agreement.
- 3.3.3** The Subvention aid is a perpetual, non-wasting assistance, meaning the account must continually be replenished as reimbursements from grantors are received. The disbursed Subvention funds balance must maintain a minimum cash balance of no less than one hundred thousand dollars (\$100,000).

Section 3.5 Audits. The State reserves the right to conduct an audit at any time after the execution of this Agreement, with the costs of such audit borne by the State. The State may require the Authority to conduct a final audit to the State's specifications, at the Authority's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by the Authority to comply with this provision shall be considered a breach of this Agreement, and the State may elect to pursue any remedies or take any other action it deems necessary to protect its interests. The Authority agrees it shall return any audit disallowances to the State. Pursuant to Government Code section 8546.7, the Authority shall be subject to the examination and audit by the State for a period of three (3) years after final payment under this Agreement with respect of all matters connected with this Agreement, including but not limited to, the cost of administering this Agreement. All records of the Authority or its contractor or subcontractors shall be preserved for this purpose for at least three (3) years after receipt of the final disbursement under this Agreement. If an audit reveals any impropriety, the Bureau of State Audits or the State Controller's Office may conduct a full audit of any or all of the Authority's activities.

ARTICLE 4.
GENERAL TERMS AND CONDITIONS

Section 4.1 Notices. Any notice required or desired to be given pursuant to this Agreement shall be given in writing and addressed to representatives during the term of this Agreement as follows:

San Gabriel & Lower Los Rivers and Mountains Conservancy
Salian Garcia, Staff Services Manager I
100 N. Old San Gabriel Canyon Road
Azusa, CA 91702
sgarcia@rmc.ca.gov 626.815.1019 x110

Watershed Conservation Authority
Deborah Enos, Deputy Executive Officer
100 N. Old San Gabriel Canyon Road
Azusa, CA 91702
denos@wca.ca.gov 626.815.1019 x112

Section 4.2. Standard Provisions. The Authority is subject to the following standard provisions:

- a. The Authority agrees to indemnify, defend, and save harmless the Conservancy, and the State of California, its elected or appointed officials, officers, agents, attorneys and employees from and against any and all claims, suits or causes of action including liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from, or connected with, the Authority's negligent, willful, or unlawful actions, operations, or services hereunder including any Workers' Compensation suits, liability, or expense arising from, or connected with, services pursuant to this Agreement.
- b. The Authority may terminate the Agreement and be relieved of contractual obligations by providing a formal notice in accordance to Section 4.1.

- c. The State may terminate this Agreement and be relieved of any pending disbursements should the Authority fail to perform the requirements of this Agreement at the time and in the manner herein, provided including but not limited to the reasons in 4.2e.
- d. The State may terminate this Agreement without cause on sixty (60) days advance written notice. The Authority would be required to return any and all disbursements, without interest, to the State.
- e. If the State determines that the Subvention aid is not being utilized in accordance with the provisions of this Agreement, or that the Authority has failed in any other respect to comply with the provisions of this Agreement, and if the Authority does not remedy any such failure to State’s satisfaction, State may withhold from the Authority all or any portion of the State funding and take any other action that it deems necessary to protect its interests, including and up to requiring the Authority to return all disbursed funds and any accrued interest immediately.

4.2.1 No terms or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing and signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether expressed or implied will constitute consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.

State of California
San Gabriel & Lower Los Angeles Rivers and Mountains Conservancy

Governing Board Chair

Date Signed

Watershed Conservation Authority

Governing Board Chair

Date Signed

Exhibit B

The Watershed Conservation Authority (WCA), established in 2003, is a local public entity of the State of California exercising joint powers of the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (RMC) and the Los Angeles County Flood Control District. The WCA is funded primarily by grants and receives limited funding from JPA Partner contributions and lease revenues for operational expenses. The WCA is limited to operating within the confines of a strictly cash position with Los Angeles County Auditor Controllers Office serving as the authority's fiscal agent. The inability to temporarily borrow funds or carry a short-term negative fund balance while awaiting reimbursement from grants is adversely affecting project delivery capacity.

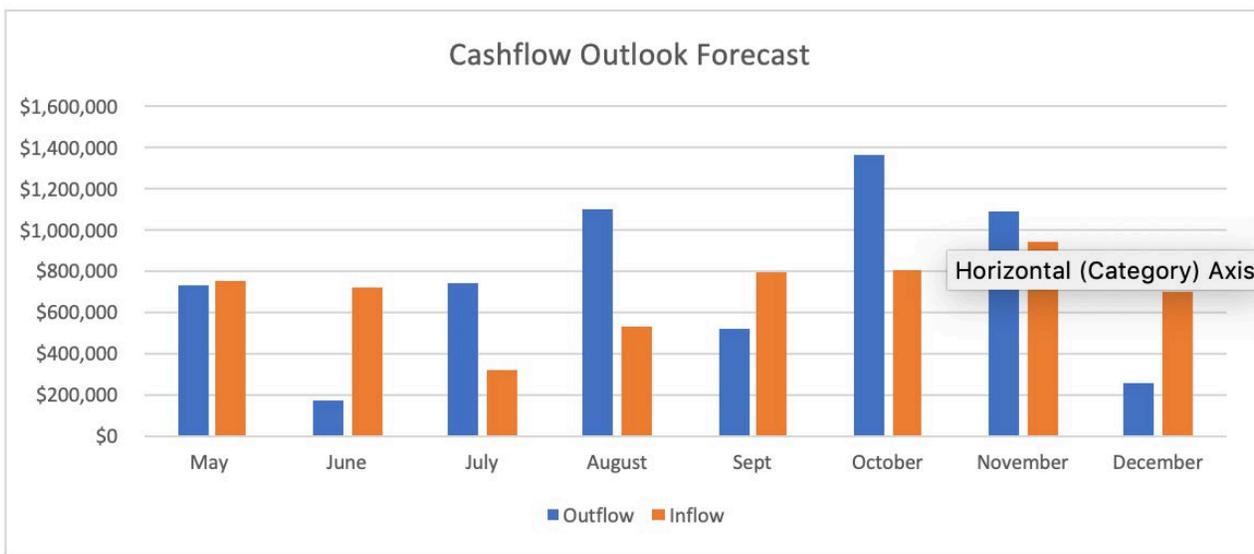
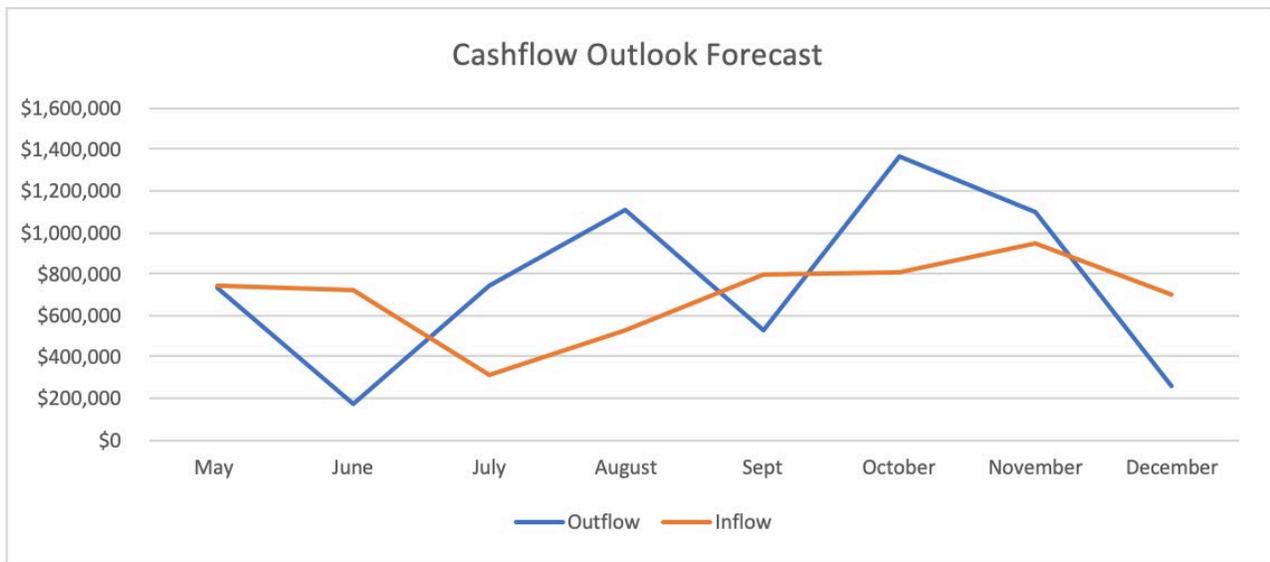
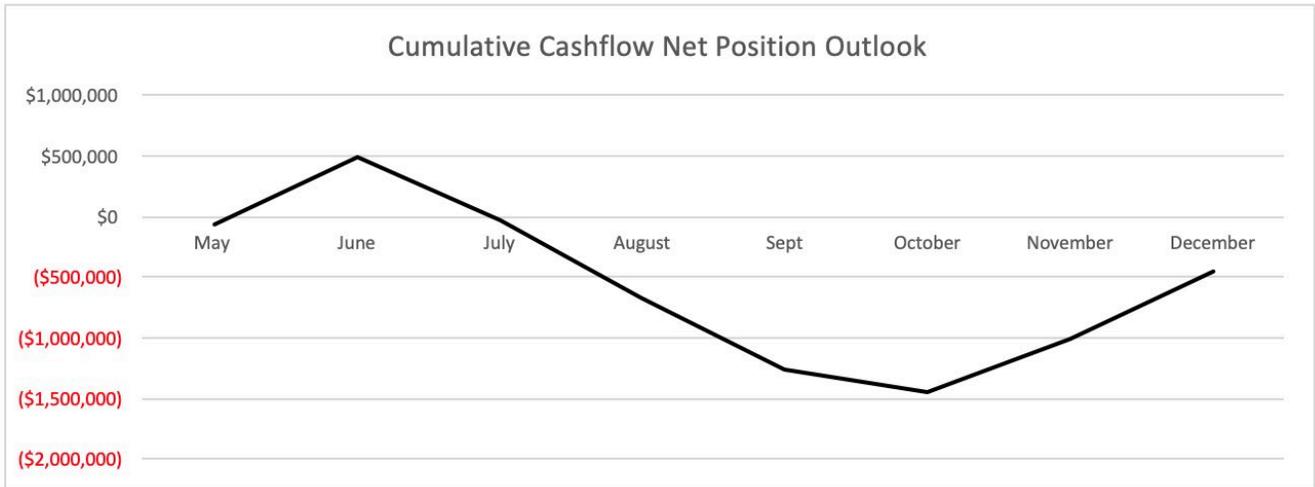
Construction projects require access to cash at a rate greater than the Authority can maintain over the life of the project with available cash on hand. This negative net cash flow condition is further compounded by payment timelines that can take 60 days or longer to process reimbursements. Retention having to be carried for the life of the grant on projects that are prolonged increase cash availability pressures.

WCA currently has one regional park project under construction and another on deck to begin in June. Together these two construction projects represent close to \$6 million in cost that will be incurred over the next 7 to 9 months. The effect of the anticipated cash payment schedule and anticipated reimbursements are shown below and depicted in the accompanying charts. The maximum anticipated gap during this period is forecasted to be \$1,442,576 occurring in November 2019. While the start of the negative cash flow position is anticipated to begin in July 2019.

Securing a non-wasting cash reserve of \$1.5 Million to meet short-term cash needs related to grant generated capital expenditures is critical to continue to deliver watershed improvement projects in our highly urban and environmentally impacted region. Funds would be replenished upon receipt of grant reimbursement payments and return of retention.

Watershed Conservation Authority Cashflow Forecast 9-Month Look Ahead

	2019								2020
	May	June	July	August	Sept	October	November	December	January
Cash Outflow	731,533.00	170,017.86	740,017.86	1,103,717.86	524,017.86	1,369,017.86	1,094,017.86	259,017.86	70,000.00
Cash Inflow	748,000.00	722,492.20	315,887.50	529,016.07	797,616.07	807,116.07	948,000.00	701,116.07	470,816.07
10% Retention	(73,153.30)	(7,001.79)	(91,101.79)	(61,901.79)	(224,401.79)	(87,901.79)	(32,901.79)	(10,901.79)	167,700.00
Cash Monthly Position	(56,686.30)	545,472.56	(515,232.14)	(636,603.57)	49,196.43	(649,803.57)	(178,919.64)	431,196.43	568,516.07
Cummulative Cashflow Outlook	(56,686.30)	488,786.26	(26,445.89)	(663,049.46)	(613,853.03)	(1,263,656.60)	(1,442,576.24)	(1,011,379.81)	(442,863.74)



July 18, 2019 – Item 14

RESOLUTION 2019-35

RESOLUTION OF THE WATERSHED CONSERVATION AUTHORITY TO APPROVE ENTERING INTO A FUNDING SOURCE STABILIZATION REVENUE SUBVENTION AGREEMENT WITH THE RIVERS AND MOUNTAINS CONSERVANCY.

WHEREAS, the Watershed Conservation Authority (WCA) has been established to facilitate joint projects between the Rivers and Mountains Conservancy and Los Angeles County Flood Control District; and

WHEREAS, The Watershed Conservation Authority has been established to focus on projects which will provide open space, habitat restoration, and watershed improvement projects in both the San Gabriel and Lower Los Angeles Rivers watershed; and

WHEREAS, this action approves entering into a funding source stabilization revenue subvention agreement; and

WHEREAS, this action is exempt from the environmental impact report requirements of the California Environmental Quality Act (CEQA).

Therefore be it resolved that the WCA hereby:

1. **FINDS** that this action is consistent with the purposes and objectives of the WCA.
2. **FINDS** that the actions contemplated by this resolution are exempt from the environmental impact report requirements of the California Environmental Quality Act.
3. **ADOPTS** the staff report dated July 18, 2019.
4. **APPROVES** entering into a funding source stabilization revenue subvention agreement with the Rivers and Mountains Conservancy for up to \$1,500,000.

~ End of Resolution ~

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Motion: _____ Second: _____

Ayes: _____ Nays: _____ Abstentions: _____

Resolution 2019-35

Passed and Adopted by the Board of the
WATERSHED CONSERVATION AUTHORITY
On July 18, 2019

Herlinda Chico
Governing Board Chair

ATTEST: _____
David Edsall, Jr.
Deputy Attorney General