

SAN BENITO COUNTY BOARD OF SUPERVISORS REGULAR MEETING MINUTES APRIL 6, 2004

The Board of Supervisors of San Benito County met in the Board Chambers on the above date in regular session. Supervisors Loe, Scagliotti, Monaco, Kesler and Cruz were all present. Also present was County Administrative Officer Terrence May, County Counsel Karen Forcum and Senior Board Clerk Linda Churchill. Chairman Bob Cruz presided.

9:30 a.m. CALL TO ORDER:

- a) Pledge of Allegiance.
- b) *Upon motion duly made, seconded and carried, acknowledged Certificate of Posting.*
- c) **Public Comment:** Web Winans, Lovers Lane resident came forward. Mr. Winans stated that after the last meeting he thought it was going to be agendaized to talk about the Fourth of July Celebration and he didn't see that on the agenda today. Mr. Winans asked if that was coming up later on. Mr. Winans thought we should be sure to have all of our ducks in order for that event.

Chairman Cruz believed the CAO was working on this and deferred the question to Mr. May.

CAO May noted he would have to contact the different departments here in the County, now that the City has formally approved the event, to get their estimated costs and impacts. Mr. May explained he would be coming back to the Board with that and is pursuing formal cost recovery from the City of Hollister for any impacts on our agencies.

- d) **Department Head Announcements:** There were no Department Head Announcements.
- e) **Board Announcements, Introductions and Presentations:** Supervisor Monaco noted that he and Supervisor Loe met last night with the Veterans Park Commission and they were still looking for someone to take over the concessions for the BMX track. There were Hollister youth that came to us last night and expressed a desire to use it. We have been perusing this for a long time, but we just can't find anybody that is willing to step up to the plate to take the concessions for the BMX track. That is kind of in jeopardy right now. Supervisor Monaco said we couldn't operate without having some sort of supervision and it is a real problem.
Chairman Cruz asked if it was closed right now.
Supervisor Monaco noted that basically that was correct.

CONSENT AGENDA:

Chairman Cruz noted that Supervisor Monaco asked to have Items #1 and #2 pulled for discussion.

Supervisor Monaco made the motion to approve Consent Agenda Items #3 through # 22. Supervisor Kesler seconded the motion.

Upon motion duly made, seconded and carried, approved Consent Agenda Items 3 through 22 with the exception of Items 1 and 2, which were pulled for discussion.

ADMINISTRATIVE BUSINESS:

1) Consider budget augmentation re: payment of Federal Child Support Automation Penalty for Fiscal Year 2003/2004. (Management Analyst)

Mr. May indicated that regarding Item #1, he would like to invite Mr. Lynn Miller, the Santa Cruz/San Benito County Regional Child Support Services Director to address the issue of the federal penalty assessed against the State of California that the State has in turn passed on to all of the 58 counties.

Mr. Miller indicated this isn't the most pleasant thing he has had to do since he has been the Regional Director. Mr. Miller stated that the federal penalties actually began in 1992. The State of California was required to start an automation plan. The departments then worked with the Department of Social Services with the District Attorney's offices and in 1997 the State admitted that they had failed in their attempt to create a State-wide Automation Plan and the penalties began in 1998. Mr. Miller stated the penalties actually could be done in a number of ways. One way is to remove your CMAP block grant and also remove the federal funding of your child support. Mr. Miller stated there is an alternative plan that the State of California said they would cooperate with the Federal Government, which said from each year we did not comply with the State-wide Automation Plan that would start at 8%, 16%, 25% and in the final years 30%, until such time as a State-wide Automation Plan began.

Mr. Miller explained under the new State Department of Child Support Services under Kirk Childs, we started the automation plan and we are working desperately to get that done. Meanwhile, the State of California, since 1998, has paid the full brunt of the penalty. Although in Legislation, it set aside 25% of that penalty for counties.

Mr. Miller noted until recently it has not been an issue with the State. The State certainly has paid it. This year, the Governor decided to pass along 25% of that penalty, which we will be looking at today, to each of the counties. The County of Santa Cruz has already paid their penalty for this current fiscal year and that is what is before you today. The State of California Department of Child Support Services and the local Child Support Services are working desperately with the State to comply with the Federal Government to get a statewide plan. Before the end of this year and into 2005, we will have implemented a two-tier system, the CASES system and our system and the State of California that will make us in compliance. Mr. Miller stated it was his hope that by September 2005, that we can rely on the Federal Government to live up to their end of the bargain and not look at this penalty for 2004/2005.

Mr. Miller stated there was no way to get around this penalty in 2003/2004. We are stuck with it. It was one of those things that are not palatable, but the State wishes me to share with you that they covered the penalty for the last five years and it is under this Governor they are now passing the 25% onto the counties. Mr. Miller stated it has to be General Fund money. You can't take State money with its matching Federal money and pay the penalty because you're paying, basically, with Federal money to pay a penalty to the Federal Government.

Mr. Miller asked if there were any specific questions he would try to answer them for the Board. Mr. Miller noted the way in which the lawsuit came down with the original vendor is that the counties were found to be a portion of the problem in the original statewide implementation system that failed in November of 1997. Again, if there were any specific questions, Mr. Miller stated he would try to answer them.

Mr. Miller said in trying to talk about Federal penalties, you feel somewhat like a used car salesman. Mr. Miller stated he felt bad that it has to come out of the General Fund money and they were doing everything they can at the regional level. Mr. Miller stated he was out there working at least twice a month and Debbie Ogawa, his assistant who has been appointed by both CSDA and DCSS, to represent the local counties in getting the system implemented. Mr. Miller stated they were doing all they can to mitigate this circumstance and not have to look at this during the next budget year.

Chairman Cruz asked if there was a possibility that between 2004 and 2005 that we might get some money back? Chairman Cruz stated this was a very needed program in San Benito County.

Mr. Miller agreed and noted that was a very good point. In fact, each time the State pays the penalty at the State level, that's money out of the local program. In addition to what the County's General Fund is paying, we are not seeing as much come into the Child Support program because it is being paid in the penalty. So, relief of the penalty in this next year will reduce it to 10% and in the following year it will be zero. Mr. Miller stated we would see more money coming into the Child Support program once this penalty goes away. Mr. Miller noted it was in everybody's interest to get it taken care of and do it the right way to make sure we have a statewide system that actually works. We can then talk with L.A. County or Placer County about cases and not duplicating cases. Mr. Miller stated it is a very needed system.

Chairman Cruz asked Mr. Winans if this addressed his questions.

Mr. Winans, from the audience, indicated that was correct.

Supervisor Kesler stated this wasn't something that we like, we know that. But she didn't think it was fair, if all the other counties were getting hurt too, but we are a little county and it hurts us twice as hard as it does big counties like L.A. County and San Luis Obispo County. Supervisor Kesler stated they can always go over here and there and get monies to help programs. We don't have that. There just is not room to go begging from another department. Supervisor Kesler thanked Mr. Miller for coming this morning.

Supervisor Monaco made a motion to approve the budget augmentation re: payment of Federal Child Support Automation Penalty for Fiscal Year 2003/2004. Supervisor Kesler seconded the motion. The motion passed unanimously. . File #22

2) Consider augmentation to the Fiscal Year 2003/2004 CAO Salaries & Benefits Budget. (Management Analyst)

CAO Terrence May invited Robin Scattini, Management Analyst to come forward and provide the Board with information on the breakdown on why we need to augment the Salaries and Benefits portion of the CAO's budget. Mr. May indicated Ms. Scattini has worked out the numbers and she can best answer any questions.

Ms. Scattini noted in December of 2003 and January 2004, we had the anticipated resignation of our former CAO Gil Solorio and our former Executive Secretary Maria Alfaro. Since both were both long-time employees of the County their vacation payouts were very substantial -- more than we had budgeted in the CAO budget. Ms. Scattini stated due to that fact, we are requesting to move some Contingency Funds to cover the remaining of their payouts to make our budget whole so we don't end up in the red at the end of the fiscal year. Ms. Scattini said that was basically the whole issue and asked if there were any questions.

Web Winans, Lovers Lane resident, came forward. Mr. Winans noted for the past several years he had talked about having the accounting done so that you are accruing the expenses as you go for such situations as this and even more importantly, if you should have a major layoff, you are teetering on the edge of having to pay out these sort of benefits and these should be a recurring expense. Mr. Winans stated that by the time it comes up, you are charging your reserve for this sort of thing and you wouldn't get hit in this situation when anybody goes. You are going to get hit for past benefits. Mr. Winans stated he didn't know why this couldn't be done when we were talking about a long time. Mr. Winans stated he felt this was a worthwhile change in the accounting program to do it so that you're not kidding yourselves that everything is just fine and you turn around and half a dozen employees leave and you've got to re-do the budgets. Mr. Winans stated it's an expense that's going on right now as we are sitting here talking for every employee you have and you should be having that expense on your books and putting a reserve to take care of this sometime later on. It's going to happen. Mr. Winans said It's just a matter of when and hopefully not too many at a time.

Chairman Cruz agreed with Mr. Winans and believed we were working on that and have always been working on that.

Mr. May agreed. Mr. May stated we have about \$3.2 million in our appropriations for Contingencies that is available to meet this kind of unperceived expenses as well as other unanticipated expenses. Mr. May explained we have no way to know from year to year how many employees will retire or leave county service otherwise and how much money we would need to set aside. Mr. May stated if we were to budget for this as a recurring expense, it would increase the costs of the current budget, but we wouldn't have any idea how much money to budget for that purpose.

Mr. Winans noted you can calculate every persons' earned benefit as you go along, it can be set up in the machinery and it was just a matter of picking the numbers out of the machine as you go along. Mr. Winans noted that amount of money goes into Reserves, a specific Reserve for this particular thing and not just a General Reserve that might be called on for some other catastrophe. Mr. Winans noted this is something we know we are going to have. The other is a maybe. So, he didn't know why it shouldn't be set up and recognized for what it is. Mr. Winans said you wouldn't have this situation we are talking about right now, or sometime in the future, because any one of you here, at least that's an employee, has an earned benefit that is his and should be in Reserves right now and not when they leave. Even if they die they will get it. So set it up and be done with it.

Supervisor Loe asked Mr. May if what Mr. Winans is saying is true. Supervisor Loe felt we should have a special reserve account just for employee benefits and then we know at some point that money will be paid out because it isn't like other reserve accounts where we might need it in a time of crisis.

Mr. May noted that was correct, but a difference between how government operates and how the private sector operates is that if the business folds, then you would have every single employee going out the door and you would be unable to fund that expense. Mr. May stated we could budget and set aside an amount equal to the comp time balances, vacation leave balances, but the probability that we would ever have to pay all of that out at the same time would be very remote.

Supervisor Loe stated she wasn't saying to put it in the budget. Supervisor Loe noted she was saying to have a different line item reserve to show that this was actually employee benefits that would have to be paid out at some point. Supervisor Loe stated she understood that we have to pay them out.

Mr. May indicated that Finance Director Dan Vrtis could probably speak better to that issue.

Mr. Vrtis came forward. Mr. Vrtis noted in regards to employee benefits, in the financial statements, that is actually a calculated cost of earned benefits that are not paid out. Mr. Vrtis stated that a prior example was when the Public Works Director left with some money going out but we didn't fill the position. So was that really a cost? Did it come from the General Fund or the Contingency? No. Mr. Vrtis stated as Mr. May mentioned, it is kind of an unknown as to how much you will really need to ever put away and that is why the Contingency is there. Mr. Vrtis explained we could put a Contingency for retirements and we used to have it in the Budget #185, a portion that was put away. Mr. Vrtis explained this year with the CAO and Executive Secretary it was kind of an unknown.

Mr. Vrtis also explained that we don't know what portion of a persons' benefits they are actually going to take out and actually use. An example is vacation. We know when a person has 300 hours that he is not planning a trip to the Caribbean for three months or three weeks or three whatever and at that point in time his benefits are going to be reduced. This would be a County nightmare to turn around and say okay knowing every month how much of a person's vacation they take. We take it out of the reserve back and forth. But, we do have in our financial statements a calculation for earned employee benefits that are presented in financial statements.

Supervisor Loe stated that at the end of the budget year we roll over extra money. Is that correct? This means anything left in a department gets rolled into contingencies or reserves.

Mr. Vrtis said it is closed out to fund balance.

Supervisor Loe said then fund balances go into reserves.

Mr. Vrtis said not necessarily. Mr. Vrtis said fund balances could go into reserves if that is what the BOS chooses to do. It can't go into fund next year's budget.

Supervisor Loe asked if the BOS would decide at budget time to set up a separate reserve account saying that we believe at some point we are going to pay out these benefits then is that a possibility?

Mr. Vrtis answered yes.

Supervisor Monaco made a motion to authorize an augmentation in the amount of \$80,000 to the County Administrative Officer's (1001-105) FY 2003/2004 Salaries & Benefits budget to be paid by General Fund Contingency Funds. Supervisor Kesler seconded the motion. The motion passed unanimously. File #865

AUDITOR:

- 3) **Approved** Departmental Claims.

CHILDREN & FAMILIES COMMISSION:

- 4) **Approved** reappointment of Kim Dryden to the Children and Families Commission for a three- year term beginning April 2004. *File #155*

CLERK OF THE BOARD:

- 5) **Approved** the minutes of the meetings of March 9, 2004 and March 23, 2004.

COMMUNITY SERVICES & WORKFORCE DEVELOPMENT (CSWD):

- 6) **Approved** agreement with Central Coast Energy Services, Inc. re: weatherization services with a contract term of April 6, 2004 through December 31, 2004 and authorized CSWD Director to sign said agreement on behalf of the County. *File #939*

HEALTH & HUMAN SERVICES AGENCY:

- 7) **Approved** proclamation declaring April 2004 as "Child Abuse Prevention" month in San Benito County. *File #430*
- 8) **Adopted RESOLUTION NO. 2004-22** authorizing Enforcement Agency grant application re: Local Enforcement Agencies (LEA). *File #130*
- 9) **Approved** augmentation to Fiscal Year 2003/2004 Budget Unit 2214-446 Maternal & Child Health and Budget Unit 2211-532 Family Resource Center reflecting additional funds received. *File #130*
- 10) **Approved** the Children's Medical Services (CMS) plan and budget for Fiscal Year 2003/2004 and authorized Chair to sign Certification Statement. *File #420*

HUMAN RESOURCES:

- 11) **Approved** budget augmentation to the Fiscal Year 2003/2004 Human Resources Professional Services Budget. *File #630*

INTEGRATED WASTE MANAGEMENT:

- 12) **Approved** agreement with Conor Pacific/EFW re: installation of two groundwater monitoring wells and attendant consulting services for same with a contract term of March 30, 2004 through March 29, 2005. *File #75.4*
- 13) **Approved** agreement with Stericycle, Inc. re: collection, transportation, treatment and disposal of bio-hazardous waste with a contract term of April 6, 2004 through April 5, 2006. *File #142*

MENTAL HEALTH:

- 14) **Approved** agreement renewal with Monterey County Mental Health re: services to minors placed in group homes in San Benito County with a contract term of July 1, 2003 through June 30, 2004. *File #810*

PROBATION:

- 15) **Adopted RESOLUTION NO. 2004-23** approving Comprehensive Multi-Agency Juvenile Justice Plan, as modified, and authorized submission to the State Board of Corrections. *File #510*

PUBLIC WORKS:

- 16) **Approved** request to declare District Attorney Office equipment as surplus. *File #105*

SAN BENITO COUNTY WATER DISTRICT:

- 17) **Approved** proclamation declaring May 2004 as "Water Awareness" month in San Benito County. *File #430*

SHERIFF:

- 18) **Authorized** the distribution of Request For Proposal (RFP) to solicit proposals for comprehensive health care services for adult inmates and juvenile detainees. *File #120.5*

SUBSTANCE ABUSE PROGRAM:

- 19) **Approved** appointment of Pat Turturici to the Substance Abuse Advisory Board as an "at large" representative for a three-year term effective April 1, 2004 through March 31, 2007. *File #1053*
- 20) **Approved** appointment of Tim Pierleoni to the Substance Abuse Advisory Board as an "at large" representative for a three-year term effective April 1, 2004 through March 31, 2007. *File #1053*
- 21) **Approved** appointment of Eva Reyna to the Substance Abuse Advisory Board as representative of Supervisorial District #5 for a three-year term effective April 1, 2004 through March 31, 2007. *File #1053*

TREASURER / TAX COLLECTOR:

- 22) **Approved** Discharge of Accountability re: uncollectable accounts. *File #1053*

9:35 a.m. REGULAR AGENDA:

Chairman Cruz excused himself from the following item and Vice-Chair Kesler presided.

ELECTIONS:

- 23) **Consider proposed resolution accepting official canvass of the March 2, 2004 General Election.**

Vice-Chair Kesler called Special Counsel Nancy Miller to the podium. Vice-Chair Kesler indicated that this item was to consider a proposed resolution accepting the official canvass of the March 2, 2004 General Election.

Ms. Miller came forward stating that the BOS had before them a resolution that has been submitted by the Registrar of Voters in accordance with law to certify the official results of the March 2nd Election. This is required by state law that a certification is done by the BOS. It is a requirement that is essentially when the Registrar submits figures to the BOS that are a result of his counting of the ballots and the BOS is certifying that these are the numbers that your Registrar has provided to the BOS. Ms. Miller stated that given the circumstance that exists in this county she has given to the BOS an alternative resolution to the one that was provided to them by John Hodges. Ms. Miller stated that her resolution does the same thing. It certifies the election results, which is required by state law, but it certifies it by what she calls an asterisks, which is some issues and qualifying statements that are specific to this particular county. Ms. Miller stated that we all know that the BOS requested that the District Attorney commence an investigation. We know that the Secretary of State's Office, has in reviewing the issues, sent an investigator to the county to assist the District Attorney in that investigation. Ms. Miller stated that we also know that there is litigation that has been filed contesting at least one of the district results and given those factors those are included in the alternative resolution that she provided to the BOS so that while the results are certified there is a potential that it will come back to the BOS for amendment, which is also possible under state law, or there may be a situation where a judge may order some different type of relief which can include a certification of the result that the BOS is certifying or it can include, if there is improprieties in the election, a call for a new election.

Ms. Miller further stated that the investigation is not yet concluded and it won't be concluded for at least a few more weeks. Under the statute the BOS is required to certify within a certain period of time. Ms. Miller said she has consulted with both the Secretary of State's Office and the Attorney General's Office about this situation, because it is unusual, and both have informed her that certifying the results with this kind qualification is the proper way to proceed. Ms. Miller told

the BOS they could also, of course, certify the resolution that Mr. Hodges has provided to them and that is another way of proceeding. Ms. Miller entertained questions.

Vice-Chair Kesler asked if the BOS decided not to certify does that mean they would go to court?

Ms. Miller answered that it means that you either go to court or someone takes you to court basically to get the end result, which is the certification of the vote.

Vice-Chair Kesler said it sounded to her that either way they go they will go to court.

Ms. Miller stated that someone was already in court and the point was (and she didn't think that there is any secrecy about the issue) there was a Temporary Restraining Order (TRO) issued by the judge to keep the BOS from certifying the results, but, that order was rescinded by the judge after court argument because the judge basically said that without certification of the results then he didn't know the official tally yet and until we know the official tally we can't proceed with the protest which would either be a re-count or an actual contest of the proceedings. So there is court action already initiated in answer to Supervisor Kesler's question, but in terms of the certification Ms. Miller said she would expect that there would be additional action to require the BOS to certify if they did not certify today.

Vice-Chair Kesler asked then they, as the County Board of Supervisors, have that choice to not certify or do it and either way we would go to court.

Ms. Miller said she was not recommending that the Board do that. She was recommending that the BOS look at the two resolutions and decide which one they preferred, but if they chose not to do that then she believed they would be in court right away.

Vice-Chair Kesler said it sounds like it could go either way.

County Counsel Karen Forcum explained that according to the Elections Code the BOS is required to certify and it is under the Elections Code, according to the Secretary of State's Office, that once there is a certification any irregularities can be addressed in court potentially through the re-count process or the contest process. So really it is a certification that triggers anybody's ability to challenge the election results so there has to be some sort of formal acknowledgment that Mr. Hodges has submitted the Statement of Result to trigger the process from this point forward by any elector that wishes to contest the results of the election in conjunction with the investigation that is currently going on. Ms. Forcum said it is through the court process that then the judge that is assigned to the case would go forward with the fact finding in conjunction with the investigation.

Vice-Chair Kesler asked that should this go to court would it go to Superior Court?

Ms. Miller answered initially yes.

Vice-Chair Kesler asked if at that time could they request another judge rather than our local judge?

Ms. Miller answered that you could always request another judge but whether or not that request is granted is typically up to the judge.

Vice-Chair Kesler said then it would be up to the judge and not the BOS.

Ms. Miller said that was correct.

Supervisor Monaco asked why do we need the asterisks information in the optional resolution to present those statements to our acceptance of the certification? Supervisor Monaco said he did not know if he understood why we need those other statements.

Ms. Miller answered that from a legal standpoint they are not required but from a practical and from a public knowledge standpoint she felt they were advisable because the BOS is in a situation where they have information of potential problems in two close races where they have knowledge of potential ballot irregularities and so it gives notice because there may be other people who might be interested in challenging these results and without that knowledge, just certifying the results no one has that.

Supervisor Monaco said that in this community right now everybody knows about that so he did not see any reason why we need to make those statements. Why can't we just accept Hodges' certification originally as it appeared? It is pretty well public knowledge and we have a District

Attorney that is already investigating this. Supervisor Monaco said he did not see any reason to be so redundant with this in a statement that we would make.

Ms. Miller stated that as she said the alternative is up to the BOS. Legally the BOS can pick either one. Ms. Miller said she just thought it was advisable given the special circumstances here. It is quite unusual. The Secretary of State doesn't often get involved in investigating communities and while Supervisor Monaco says everyone knows and there are newspaper accounts there is nothing official from the BOS about these matters and so that is why she provided an alternative resolution.

Supervisor Monaco stated that the other issue that he sees is what we do have here, whether it is valid or invalid, is here-say information of possible things that have happened. It is in the hands of the official investigative agency. Supervisor Monaco stated that he just did not see the need for us to enter into this fray with other statements of conditions and everything else. If we just straightforwardly accept certification period and then that process of investigation in the courts, and whatever else happens, happens.

Ms. Miller said that it was up to the BOS. She just thinks that the BOS has some knowledge that is not here-say and that is simply what the alternative resolution is provided to the BOS for. It is an alternative for them to say they can do either thing officially. They can provide just the statutory statement, which is what is typically done in every county, or they can provide an alternative, which kind of has the asterisks that acknowledges there are some issues here that are unique. Ms. Miller said that Supervisor Monaco was right in that it was up to BOS and they could do either one.

Vice-Chair Kesler stated that before there are any questions from the audience she just wanted to say that she has only been this county for 25 years and she does know that there have been mistakes – and she was not blaming John Hodges or the Elections Department – she was just saying that each year that we have an election we seem to have mistakes and she felt this was the time that this BOS should hold fast and say “It has to stop now”. It cannot continue. Vice-Chair Kesler said that in November we would have the General Election and do we want to go through this over again. No. She did not think at this point that we should certify that canvass. Okay so we go to court. Let's get it all ironed out. Vice-Chair Kesler said she did know that the Secretary of State is here and she has known from the get go that they were here and she fully believes that this is the time that this County should stand up and be counted as saying we are one of the counties, and we are not the only ones. In this election she knows of another one, Orange County, which is having the same problems. So let's say this is the time we've got to stop it and if it means go to court then we go to court. Vice-Chair Kesler said they have already spent several thousand dollars of time trying to straighten this thing out and it isn't straightened out yet and there is two districts in this County at this time – not her own district and she is not speaking about her own – but, District 1 and 5 there is a discrepancy so she asked the audience to bear with us and say the BOS is correct. There have been mistakes made and stand behind us and say we are a county and we want this straightened out.

Vice-Chair Kesler said she did not want to hear Mr. Hodges' statement yet but if he had something else to say he could.

Mr. Hodges said he would wait.

Web Winans, Lovers Lane resident, said he has been out there watching all of this going on and he agrees that there is a lot of word put out in the papers and everybody should know about it, but, believe me, not very many people cared to keep knowing about this sort of thing. Mr. Winans said that he would have to say to Supervisor Monaco that if it isn't in that official document it could be easily ignored and papered over by something else that would take all of the interest away from it so he wanted to make sure that if this is of question, and it seems to be, that question is an official statement that cannot be lost or papered over. Mr. Winans said he was requesting that the BOS take that approach.

Steve Lujan, Hollister resident and member of the San Benito County Mexican-American Political Association (MAPA), came forward. Mr. Lujan said they were political and they were

concerned about the last election and the effect that it is having on the voting public and also the integrity of the Elections Office. Mr. Lujan said they have been in contact with the Secretary of State's Office in reference to allegations and investigations. Mr. Lujan said they wonder what effect this will have on future elections. Since the election has been certified by the State, we as MAPA, request certification by the Board of Supervisors (BOS). As you well know, five days after certification complaints can be forwarded to the State.

County Clerk/Auditor/Recorder/Registrar of Voters John Hodges came forward. Mr. Hodges stated that it is recommended that the BOS adopt his resolution accepting the Certified Statement of Election results for the March 2, 2004 Presidential Primary Election and authorize the Chair to sign. Mr. Hodges said he would like to state for the record that he is recommending that the BOS adopt the resolution submitted in his (Hodges') packet that was prepared by himself and his staff. Any resolution other than the one submitted he does not agree with and recommends that it not be adopted.

Supervisor Loe stated that with regards to all of the paperwork she has read she has one question she has not been able to find an answer for. In one of the resolutions before the BOS it states that the BOS gets a list showing how every precinct voted and she did not see that. Supervisor Loe asked if that was something, by law, that they should have?

Mr. Hodges said yes it was available.

Supervisor Loe said they didn't have it at this time to certify and asked if they need it to certify.

Mr. Hodges said no they just need the certification of the results of all of the races. As far as the breakdown that is on file and available.

Supervisor Loe asked then was the resolution before them in error? Not Mr. Hodges' resolution but she had another copy of a resolution stating that the BOS gets the breakdown per precinct and that is not correct

Mr. Hodges said it was on file and it is at the disposal of the BOS if they wanted it.

Supervisor Loe asked if that is what they were suppose to be certifying?

Mr. Hodges said what they were certifying was the results of the election meaning the total count.

Supervisor Loe asked then they don't need to see the precinct results for certification?

Mr. Hodges said no but they are available.

Supervisor Monaco said anybody could come and see those results because they are public record.

Mr. Hodges said yes they are public record indicating that it was a very thick packet of information giving the breakdown of each precinct and how each race was calculated.

Vice-Chair Kesler referred to a comment by Nancy Miller, that the Chair, which she (Kesler) happens to be this morning, would sign. Vice-Chair Kesler asked what would happen if the Chair refuses to sign?

Ms. Miller said she would ask that question of County Counsel but typically if the Chair refused to sign, meaning in other words that he or she would be refusing to vote with the certification, then typically you have a Vice-Chair that can sign in he or she stead.

Vice-Chair Kesler said she was the Vice-Chair.

Ms. Miller said that when the Chair and Vice-Chair are unable to sign typically another member of the Board of the approving three members could sign as so designated. So you have to vote and designate who would sign if the Vice-Chair were not going to vote for it.

Vice-Chair Kesler said she would see how the other members feel.

Supervisor Monaco made a motion to adopt the Resolution accepting the Certified Statement of Election Results for the March 2, 2004 Presidential Primary Election and authorize the sign. Supervisor Monaco noted that he was referring to the original document that was presented to the BOS by the County Clerk's Office.

The motion died for a lack of a second.

Supervisor Scagliotti made a motion to adopt the modified **Resolution (Res. No. 2004-24)** as provided by Special Counsel Nancy Miller. Supervisor Loe seconded the motion.

Roll Call Vote:

Supervisor Loe - Yes

Supervisor Scagliotti - Yes

Supervisor Monaco - No

Supervisor Kesler - Yes

The motion passed 3-1 with Supervisor Cruz absent for the vote.

Vice-Chair Kesler thanked the public for paying attention to what was happening today and stating, "Let's hope it never happens again". Vice-Chair Kesler said she knew there were some people in the audience that are not very happy with this and maybe they were not happy about the way she has handled it but that was okay. We all have our opportunity to say what we feel and this is really the way she feels. There was a mistake made in this election and it is up to this BOS to correct it and she hoped this would do it. Vice-Chair Kesler thanked the member of the public present today and stated she wished there had been more people to speak out and let us know their thoughts and feelings because if they don't we are not able to read faces and read eyes so come to this BOS and feel that you can say what you wish. Vice-Chair Kesler said it doesn't mean that we'll accept what is said but we will try.

Vice-Chair Kesler handed the gavel back to returning Chair Cruz.
Chair Bob Cruz presided over the remainder of the meeting re:

PUBLIC WORKS:

24) **Consider approval of installation of seasonal low water crossing at Hospital Road and approval of budget augmentation from General Fund Contingencies for purchase of required materials. (cont. from 3/23/04 mtg.)**

Pete Corn, Assistant Public Works Director, provided background information stating that on January 6, 2004 the BOS approved construction of a new bridge at the crossing of the San Benito River at Hospital Road. The anticipated start of construction is the spring of 2006. Prior to approval of the permanent bridge the Public Works Department had secured required permits for a seasonal low-water crossing at this location with the permit being issued in September 2003. Mr. Corn stated that the State of California Department of Fish and Game issued a permit for the crossing on April 25, 2003 for the years 2002 and 2003. The initial application for this permit was made back in 2001. A renewal of this permit was issued on January 6, 2004 for a one-year period. This permit states that we will be able to put the crossing in May 15th and it has to be removed by October 30th of this year. This renewal permit will have to be requested every year. Due to the timing of the county budget preparation for the 2003/2004 fiscal year the funding for this crossing was not requested and we were unaware that we were even going to get the permit.

Mr. Corn continued noting that attached to the BOS packet are quotations for the materials needed to construct this low-water crossing and actual construction will be accomplished by County forces. The expense for this project needs to be augmented to the 2003/2004 budget and a request for budget augmentation to the Road Maintenance Budget 2102-303 in the amount of \$35,880.00. Mr. Corn said this was presented for approval by the BOS. There are two items listed under the recommended actions and basically what we are looking for is the direction on the first recommended action, which is the installation.

Supervisor Kesler asked if Mr. Corn was saying that this was going to cost \$35,000 plus \$3000 every time we have to pull it out and have to then put in back in and would this be done twice a year?

Mr. Corn answered yes it would be twice a year.

Supervisor Kesler asked if the \$3000 was included in the \$35,000?

Mr. Corn answered no it was not. The \$3000 is labor and equipment costs.

Supervisor Kesler asked when they planned on starting the bridge?

Mr. Corn said it was scheduled for the spring of 2006. The actual construction could not start until after May 15th. That is the first day we can get into the riverbed.

Supervisor Loe asked about the actual cost of the equipment itself and could it be used in other areas? If we pulled out equipment at the usual low water crossing after it has been used and we have the permanent bridge in there, would we be able to use this in other areas of the community?

Mr. Corn said that the gravel could be re-used and the culverts could be stock piled for future use but the size of the culverts that Fish and Game has required would make it hard to find someplace to use them because they are 48 inch culverts.

Supervisor Loe asked how much of the \$35,000 is material that we won't be able to use?

Mr. Corn said approximately \$6000.

Supervisor Loe said then \$29,000 worth of the actual material would be usable in some other areas of the county.

Mr. Corn answered yes. We could stock pile it and re-use it. This is basic base rock.

Supervisor Kesler asked if there was low-water crossing in there now?

Mr. Corn answered no. There has not been one there since the 1998 storm.

Supervisor Kesler said and so now we are thinking about spending \$35,000 plus with \$6000 each year for one and a half to two years at the most. It doesn't seem feasible since money these days is so hard to come by.

Supervisor Monaco stated that this is again one of those situations where Fish and Game is forcing us to spend quite a bit of money and he wanted it clearly understood that this is temporary and is only going to be in there for those dates from May 15th to October 30th and it automatically comes out even if the river is not running. Supervisor Monaco noted that the river typically does not run for long periods of time and they will still not have the use of that crossing even though there is no water running in there and we'll automatically be forced to take it out and he wanted that clearly understood in that area that we are forced into this situation and it isn't a county requirement. This is Fish and Game dictating to us what has to be done.

Mr. Corn said that the actual permit issued by Fish and Game is in the BOS's packet and the renewal permit and that dates are clearly stated on there what time you can get into the riverbed and put it in and what day we have to have it out.

Supervisor Monaco said he could envision people from his district phoning him and saying how come you are removing this and there isn't even any water in there for a long period of time. It is a dry arroyo for most of the time and still we are going to be forced to have to remove it each year and apply for this permit each year. Supervisor Monaco said he understood the need for that crossing. It hasn't been opened for a long, long time. There are some issues from Forestry being able to access in that area for a quicker response time. There are also issues of having another access other than Cienega Road. Supervisor Monaco said he understands the need for a crossing there. It just really bothers him that Fish and Game is forcing us into a situation that just isn't reasonable.

Supervisor Kesler asked if it was the County's idea to put in the low water crossing and not Fish and Game's idea.

Mr. Corn answered that actually it was requested by a previous BOS member that we look into permitting.

Supervisor Kesler said then Fish and Game had nothing to do with it.

Mr. Corn said no they didn't and actually Fish and Game would rather not see us put it in. The least amount of footprints we put in the riverbed the happier they are.

Chairman Cruz said in other words it comes out between May and October.

Mr. Corn said no that is when we would put it in.

Chairman Cruz asked about the \$3000 that Mr. Corn was talking about stating that previously he had asked Mr. Corn if he would be willing to notarize that \$3000 and at that time Mr. Corn said he couldn't because he really didn't know what its going to cost us. But, you have \$3000 here as a figure and he wanted to know if that was good figure for the public because this \$3000

could come out to be much more than that depending on if there is a storm or something. For \$35,000 we would put it in and for \$3000 we would take it out and for another \$3000 you would put it in. Are you willing to notarize that?

Mr. Corn answered yes he would. Unless we have all the materials we are going to purchase washed away in a freak storm, the actual \$3000 is \$1500 labor and equipment costs to install it and \$1500 labor and equipment costs to remove it. That does not include any more material to be bought.

This is planned on only a one-time purchase of the materials. Now if there were a freak storm then we would have to deal with it at the time.

Chairman Cruz said that it should have been worded that way that if there is a freak storm then there is a possibility that the \$3000 may be \$6000. There is no use fooling around with this. It's either going to be \$3000 or \$6000.

Jack Bollus, Cienega Road resident, came forward. Mr. Bollus stated that he has lived at the corner of Hospital and Cienega Road for the past 22 years. Mr. Bollus said he cannot understand why this county has not put that crossing back in. He also cannot understand why we are not putting in a concrete Arizona crossing like Tres Pinos because he did not feel that there was anybody who could guarantee we are going to get this bridge with the money situation the way it is. Mr. Bollus asked the BOS if any one of them could guarantee that we are going to get this bridge in 2006? No, it is up in the air. So why can't we look at something really practical like a concrete Arizona crossing and why can't we ask Fish and Game to prove why we can't do these things.

Mr. Bollus told the BOS they are allowing motorcycles, four wheelers and everybody else in that river and they don't want footsteps in that river. Who is watching the hen house? Mr. Bollus said he would like to know and he would like to know why we can't have fire and health and safety on our side of the river and nobody really cares. We could burn to the ground by the time they get there but nobody around here seems to care and it has been this way since 1998. Mr. Bollus said he would really like to hear some answers as to why we can't force the County to do something and they keep talking about putting another road extension over there below us to relieve the traffic. Mr. Bollus said if you want to relieve the traffic then open Hospital Road across that river and you will see a big change in the traffic on Cienega. Mr. Bollus said he would just like to hear some comments as to how and why from the County or from somebody. Mr. Bollus said he has seen the traffic, seen the accidents and seen all of this out there. People go racing down to Hospital thinking they are going to cross that and then come to a screeching halt and turn around and come back. It is really ridiculous! Then they race up Hospital Road on Cienega and go by that new development of Ashford Highlands and look at the skid marks and the accidents that have happened up there because of poor planning. Mr. Bollus said he just didn't understand why we couldn't do something real simple like putting an Arizona crossing in that riverbed that is permanent. They put in the lift out grates, they go out and they dig it out every time it fills up, and it takes a day or so to do that, but we are back in business after a storm. Here we are going to get one from May to October, which is ridiculous. It is a dirt crossing and guess where that dirt is going to go and that rock. It is going to go down the river. You are going to pay \$35,000 again. Mr. Bollus said to guarantee him that it won't go down the river. Mr. Bollus stated that this is really a no brainer and he didn't know why we can't have a concrete Arizona crossing because you can't guarantee the bridge and we can't afford \$35,000 every time it goes down the river but an Arizona concrete crossing will stay there and can be cleaned up and utilized every year after every storm.

Supervisor Kesler asked Mr. Bollus if he was saying that he would rather see a low water crossing put in there and not build a bridge.

Mr. Bollus answered you bet. You give me one good reason why we need a bridge other than about one month out of the year. Why spend the money for a bridge when an Arizona crossing will solve the problem? That river is dry. Mr. Bollus said he lives there and once in a great while we get these big storm like we did in 1982 and 1998 but if the Arizona crossing is done right it will still be there when its done.

Supervisor Kesler asked that being that she has never been to Arizona, what is an Arizona crossing?

Mr. Bollus said it was a concrete build-up structure that goes across for the road and then down in about 10 feet on either side into the existing riverbed that makes it so that no storm can rip it up. In there is a lift-out grate that takes the normal flow of water and the grates can be unbolted, they dig it out with a backhoe, put them back and everything is back in business.

Supervisor Kesler asked Mr. Bollus if he had any idea what that would cost?

Mr. Bollus said he did not and he did not have the opportunity to get that cost. Mr. Bollus said he was sure that someone could do it. They did one at Tres Pinos so someone should be able to find out about it very easily.

Supervisor Monaco stated that the BOS addressed this issue before and he asked Arman Nazemi of the Public Works Department to come forward and explain the rational for not allowing a low water crossing in there.

Mr. Nazemi explained that we have gone through this before with regards to low water crossings. Because of the restrictions that Fish and Game has on us it is no longer a viable alternative unless you have a permanent structure in place. Now there are two types of structures that we could put in the crossing – one is a permanent low water crossing and the other one is a bridge structure. Mr. Nazemi stated that the problem is the financing. We could always place a crossing under bridge replacement program that pays up to 80% of the cost by a Federal Program. The 20% will be a local match and in this case since this was a damaged site due to the 1998 floods, the State Office of Emergency Services decided to pay us the 20% local match. If we go with any other structure other than the bridge they decided to pay only 25%. Mr. Nazemi said that what Mr. Bollus is talking about might cost \$800,000. So we would have to cough up the 75% of that from local match and it is not an all year round access across the river.

Supervisor Kesler said that mentioning the \$800,000 meant a lot.

Mr. Nazemi said those were the reasons that we decided to go with the bridge structure because actually it did not impact the General Fund and would be all paid for.

Supervisor Monaco asked if that answered Mr. Bollus' question?

Mr. Bollus said he would like someone to guarantee that we are going to get a bridge.

Mr. Nazemi said that they have been notified by CalTrans that we were in and we are committed and we are going to have a review meeting in a month and then after it would be about a year for the environmental review and the engineering that it will take to get to the final design and professional plans and specifications so Mr. Nazemi said he was anticipating that we may be able to start construction in the Summer of 2006. All of the environmental clearance will be obtained by then.

Supervisor Kesler asked Mr. Nazemi if he could see any reason to put in a low water crossing there?

Mr. Nazemi said they have already expressed their concern regarding the emergency access, the shortcut and the traffic itself, which puts a big burden on Union Road and Cienega Road. Mr. Nazemi said he felt it was worth our while. He said it was just a decision that the BOS has to make but he personally thinks that the river crossing, at this point that is abandoned, has always been a liability for the county in the case of fire, heart attack victims, police or whatever services have to provide the community across the river and as it was expressed in the public hearing before, we are going to be late in responding to those issues. So it really is an executive decision that the BOS has to make whether they feel it is wise or not.

Supervisor Kesler asked Mr. Nazemi hasn't it been that way all along?

Mr. Nazemi said we have been lucky.

Supervisor Kesler said okay we have been lucky and she hopes that our luck continues.

Paul Wattis, Panoche Road resident, came forward. Mr. Wattis said he couldn't help but to jump into this fray himself. Mr. Wattis said he was also a paving contractor as well as a rancher. Mr. Wattis said he has been listening to these pie in the sky and \$800,000 low water crossings. The County has just recently spent \$100,000 for a bulldozer of their own. They also have a couple

of \$140,000 motor diggers. Mr. Wattis said he would suggest that you go across the street from the Southside Yard and pick up some of those old culverts and go down in that river and make a crossing and put those old culverts off to the side and they'll stay there next year. Make a little lower spot there, smooth it out and when the river comes it will take the low spot out and all you have to do is go in and dump a few more loads in there and if you really don't contaminate that river too badly you won't have anything to take it out come October. Mr. Wattis stated that if Fish and Game comes to tell you to take it he'd tell them where to go.

Supervisor Kesler stated that being money is so tight right now she made a motion to put this back to bed and let it sleep for a couple of years and hopefully there will be monies to build a bridge. Supervisor Scagliotti seconded the motion.

The motion passed 4-1 with Supervisor Monaco voting no. File #105

PLANNING DEPARTMENT - R. Mendiola:

25) Consider progress report re: Draft Interim River Management Ordinance. (cont. from 1/27/04 mtg.)

Planning Director Rob Mendiola came forward and provided background information. Mr. Mendiola said that they began working on an Interim River Management Plan and submitted it and quite frankly it got a pretty poor reception. As a result of that we had a public workshop and had about 60 people attend and got a lot of good input and we have determined that we need to go back and make more changes than we initially thought we would. Mr. Mendiola said this was going to be a major re-write and the BOS wanted a report in 60 days but we are not ready so we are asking to give us a little bit more time. We are still working on it. We are going to take into consideration all of the comments that we received and we have received many, both written and verbal, and we will report back to the BOS sometime soon at the Board's direction.

Supervisor Kesler asked Mr. Mendiola if we asking for a certain amount of days.

Mr. Mendiola said no. The BOS had asked that he report back and he is reporting that we are still working on it. If you want it in a given time then we will prioritize it to that time level otherwise we are just going to keep working on it and bring it back. We would anticipate that we will need an additional workshop with the public and give them an opportunity to see the revised draft and then work through to the Planning Commission and then ultimately to the BOS. Mr. Mendiola said it would take some additional time.

Supervisor Monaco stated that since he made the request originally that it be reported back in 60 days he would like to say that we have made some progress and he would just as soon let the Planning Commission and staff continue to work on this project and report back to us in the foreseeable future.

Chairman Cruz asked if the study meetings were going well?

Mr. Mendiola said they went very well. There are a lot of critics of what we had drafted and we are going to attempt to address those issues. We think we have some methods that we could address many of the concerns and we are working on that.

Chairman Cruz directed the Planning Director to bring the item back when he had it ready. File #790

ADMINISTRATIVE BUSINESS:

26) Consider update on status of 2000 and 2004 park Bond Act (Proposition 40) Funding. (CAO)

County Administrative Officer (CAO) Terrence May stated that he wanted to give the BOS an update on the status of the 2000 and 2002 State Park Bond Act monies that are available to San Benito County. Mr. May reported that from the 2000 Bond Act there is \$184,000 that has been encumbered by the State Department of Parks and Recreation for San Benito County and an additional \$1.2 million dollars available to San Benito County from the 2002 Park Bond Act. Mr. May noted that we have actually heard about both of these items before. Mr. May indicated that Nadine DaRosa, the Public Works Administrative Services Manager, brought resolutions to the

BOS that were discussed and executed and sent off to the Department of Parks and Recreation and Mr. May reported that those funds will continue to be available to this County for several more years. The 2000 Park Bond Act money for \$184,000 lapses in June 2008. The 2002 Park Bond monies totaling \$1.2 million will lapse on June 30, 2011. With regards to the first piece of funding in the amount of \$184,000 Mr. May said he thinks our Public Works Department can come up with a number of comparatively small scale projects in the three-county parks that would use up most, if not all, of that money; however, with regard to the larger appropriation of \$1.2 million, although those funds have been set aside in Sacramento for us through June 30, 2011, we have yet to identify a project or projects for those funds. The procedure we would need to follow first would be to identify the projects that we want to fund, submit that information to the State, enter into a contractual agreement with them and then the State will make those monies available.

Mr. May further reported that the types of projects that we could be looking at could include land acquisition such as for a new County park, joint projects with the City of Hollister and City of San Juan Bautista to develop parks there; improvements to the three county owned parks, Veterans Memorial Park, the Historical Park and the San Justo Reservoir, or we could purchase land elsewhere for future land development. Mr. May said another possibility would be some joint projects with local schools. So there is a range of eligible projects that the \$1.2 million could be used for and Mr. May suggested that as soon as we get our new Public Works Director on board that we start a participatory process to get input from the public on various ideas for how to best spend those monies to meet the park and recreational needs of the County. Mr. May indicated that these funds are State Bond Act monies and they can only be used for capital expenditures. They cannot be used for operating expenditures. So any facility that we might improve or construct with these funds, we would be responsible for the cost of maintaining and operating those facilities.

Mr. May stated that he just wanted to let the BOS know that the money is still out there. We are not in any danger of losing that money. We have several years in which to identify eligible projects to submit to the State Department of Parks and Recreation so that we can tap into the funding. Again, with regard to the smaller Park Bond Act monies (\$184,000) our Public Works Department probably has a number of projects that they can identify pretty quickly that can apply to our existing park facilities.

Chairman Cruz said that there are two supervisors on a committee and they are looking into some property right now that the monies could be used for. We do need some parks here in San Benito County. We are growing and we will continue to grow and we need to look to the future.

No action required. File #93

The Board adjourned as the San Benito County Board of Supervisors and reconvened as the San Benito County Financing Corporation Board of Directors.

The minutes for the San Benito County Financing Corporation Board of Directors have been prepared separately.

The Board adjourned as the San Benito County Financing Corporation Board of Directors and reconvened as the San Benito County Board of Supervisors.

10:15 a.m. CLOSED SESSION AGENDA:

The Board adjourned into Closed Session and reconvened into Regular Session re:

27) Conference with Legal Counsel - Anticipated Litigation

- a) Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9. Number of cases: 3

2 cases withdrawn by County Counsel

1 case – No reportable action.

b) Initiation of litigation pursuant to subdivision (c) of Government code Section 54956.9.
Number of cases: **3**
All three cases withdrawn by County Counsel. File #235.6

28) **Conference with Legal Counsel - Existing Litigation**

a) Sandman vs. County of San Benito

No reportable action.

b) Monteon vs. Richard Scagliotti, San Benito County Board of Supervisors, San Benito County Financing Corporation

No reportable action.

c) California Farm Bureau Federation, et al. vs. California Department of Forestry and Fire Protection, et al.

No reportable action.

d) County of San Benito vs. John Anderson

No reportable action.

e) Marian Cruz vs. San Benito County Registrar of Voters, et al.

No reportable action. File #235.6

29) **Conference with Labor Negotiators:**

Agency Designated Representatives: Terrence May, CAO and Elizabeth Brown,
Human Resources Director
Employee Organization: General Unit - SEIU, Local 817

No reportable action. File #235.6

The vote of each member of the Board of Supervisors upon each matter at the foregoing meeting, unless otherwise stated, was as follows:

AYES:	SUPERVISORS:	P. Loe, R. Scagliotti, R. Monaco, R. Kesler, B. Cruz
NOES:	SUPERVISORS:	None
ABSENT:	SUPERVISORS:	None

There being no further business the Board adjourned to its next regularly scheduled meeting on Tuesday, April 13, 2004 at 9:30 a.m.

BOB CRUZ, CHAIRMAN

San Benito County Board of Supervisors

ATTEST:

John R. Hodges

Clerk of the Board

BY:

Linda Churchill

Senior Board Clerk