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DEPARTMENT OF JUSTICE



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January 19, 2006

Laurie Collins
Chief Staff Counsel
Santa Monica Mountains Conservancy
Los Angeles River Center and Gardens
570 West Avenue Twenty-Six, Suite 100
Los Angeles, CA 90065

RE: Review of Grants SMM-879, SMM-894, SMM-6105 and SMM-0398 (Project Planning
and Design Grants)

Dear Ms. Collins:

In its March 2004 management letter to the Conservancy, the Office of State Audits and Evaluations of the Department of Finance (Finance) raised questions about grants SMM-879, SMM-894, SMM-6105 and SMM-0398 that the Conservancy had made to the Mountains Recreation and Conservation Authority (MRCA) for "project planning and design." After Finance raised questions about these grants, the Conservancy referred them to us for review in 2004. At that time, we indicated that we did not have sufficient information to determine the propriety of these grants. In its ongoing effort to resolve all the issues which arose out of Finance's 2004 audit of the Conservancy, the Conservancy has referred these grants to us for further review along with additional information on the MRCA's expenditure of the granted funds.

In June 2000, the Conservancy authorized grant SMM-879 in the amount of \$225,000 from Proposition 12 bonds funds. In June 2001, the Conservancy authorized an augmentation of this grant in the amount of \$375,000. In June 2001, the Conservancy and the MRCA entered into grant SMM-894 in the amount of \$440,000 in Proposition 12 funds for the 2001-2002 fiscal year. In September 2002, the Conservancy extended this contract through the end of June 2003, and augmented the contract by \$98,010 for a total contract of \$538,091 which came from both Proposition 12 and Proposition 40 bond funds. In September 2002, the Conservancy awarded the MRCA \$598,950 in Proposition 40 funds in grant SMM-6105. Finally, in June 2003, the Conservancy awarded the MRCA \$500,000 in Proposition 40 funds in grant SMM-0398. When the Conservancy awarded these grants, it did not specify the projects on which the grant funds would be used. Rather, each grant was identified as being for project planning and design. At

this time, the MRCA has expended all the bond funds that the Conservancy awarded in these agreements.

We are conducting this review pursuant to two provisions of the 2004 Budget Act. First, the Legislature provided as follows:

The Conservancy shall secure refunds from the [MRCA] of the unencumbered balances of previous years' grants made from the funding authority to the Conservancy. For purposes of this provision 'unencumbered balance' means funds that are not essential to fulfill the obligations of an enforceable, legal and binding contract as determined by the Office of the Attorney General. . . .

(See, e.g., Stats. 2004, Ch. 208, § 2.00, item 3810-301-0005, provision 6.) Here, because the MRCA has expended all the grant funds, there are no remaining grant monies that the MRCA can refund.

In addition, provision 7 of the Budget Act provided:

Any time that the Office of the Attorney General concludes that any use of bond funds has not been consistent with the opinion standard, the Santa Monica Mountains Conservancy shall follow the instructions of the Attorney General with respect to recovery, refund, or other settlement.

Our task now is to determine whether, consistent with the opinion standard, the MRCA expended the funds for planning and design relating to the acquisition or improvement of appropriate capital assets.

Pursuant to the General Obligation Bond Law, the Conservancy can properly finance planning and design costs with bond funds if those costs were incidentally but directly related to the acquisition or improvement of an identifiable capital asset. (Gov. Code, § 16727, subd. (a).) Both Propositions 12 and 40 incorporate the General Obligation Bond Law. (Pub. Resources Code, §§ 5096.361, 5096.666.) Thus, Proposition 12 and 40 bond funds may also be used to finance planning and design costs that are incidentally but directly related to the acquisition or improvement of an identifiable capital asset. Finally, Proposition 40 authorizes the expenditure of bond funds for the preservation of capital assets. (Pub. Resources Code, § 5096.605, subd. (j).) Therefore, Proposition 40 bond funds also may be used for the planning and design of such preservation.

The Conservancy has now provided us with additional information on how these funds were expended which allows us to determine if the expenditures were proper. For each of these grants, the Conservancy has provided us with a copy of a MRCA report which summarizes the projects on which the grant funds were spent. Each report adopts the same approach in summarizing the expenditures. In each report, the MRCA notes that some of the funds were used for direct acquisition costs of various specifically-identified properties. For example, the MRCA

used some of the funds from SMM-398 to assist in the acquisition of properties in the Upper Santa Clara Watershed and in the Malibu Creek Watershed. The MRCA used some of the funds from SMM-879 to assist in the acquisition of properties in Mandeville, Mulwood and Malibu Canyons, in the Baldwin Hills, and in the Newhall Pass Wildlife Corridor. The MRCA also identified projects where the grant funds were expended for the preparation of project plans, land acquisition evaluations and appraisals. For example, the MRCA used some of the funds from SMM-894 for six appraisals and for Department of General Services review of 9 appraisals. Similarly, the MRCA used some of the funds from 6105 for 9 appraisals and for Department of General Services review of 8 appraisals. The MRCA notes that the bond funds were also used to fund costs relating to properties that it acquired without the use of bond funds—for example, entities donated properties to the MRCA or the MRCA acquired properties using funds from other entities. Finally, the MRCA indicates that some bond funds were expended in unsuccessful efforts to acquire capital assets. For example, in some instances, a seller that had been willing to sell became unwilling to sell.

Based on our review of the MRCA reports, it appears that the MRCA actually expended the bond funds on acquisitions or on activities that were incidentally but directly related to acquisitions. Using bond funds for such activities is appropriate.

We note that neither the Conservancy resolutions approving the grant of these bond funds to the MRCA for project planning and design nor the grant agreements themselves specified the projects on which the bond funds would be spent. Had we reviewed these grants prior to their issuance we would have advised the Conservancy that the funding should be directed toward specific projects. It is our understanding that when it grants bond funds for planning and design, the Conservancy now requires that the grant agreements identify the specific projects on which those funds will be expended.

Please do not hesitate to contact us if you have any questions about the foregoing.

Sincerely,



JOHN A. SAURENMAN
Supervising Deputy Attorney General

For BILL LOCKYER
Attorney General

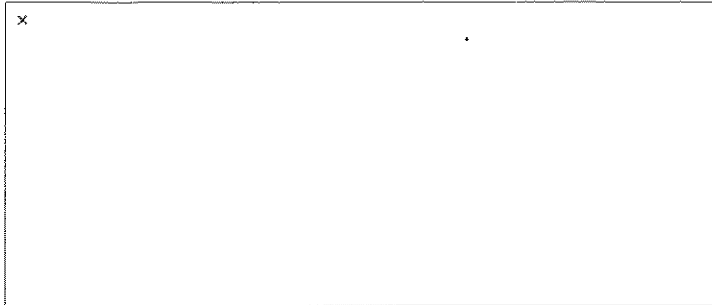
Re: Letter you requested.

Mon, June 21, 2010 8:51:43 AM

From: "Gary Neely@aol.com" <GaryNeely@aol.com> View Contact
 To: marcde6919@yahoo.com

Thank you, Marc.

So, the Attorney General's office (Saurenman) never really addressed how almost \$3 million in misappropriated funds would be accounted for, did they? They just said:



But they never did address these specific grants:

F5, A	SMM-6118	\$ 36,556	Emergency Preparedness, Food, Equip (Prop 12)
F5, C	SMM-6116	\$132,888	L.A. River Center Improvements (Prop 40)
F5, C	SMM-398	\$500,000	Project Planning & Design (Prop 12)
F5, C	SMM-6105	\$598,950	Project Planning & Design (Prop 40)
F5, C	SMM-879	\$600,000	Project Planning & Design (Prop 12)
F5, C	SMM-894	\$538,091	Project Planning & Design (Prop 12/40)
F5, C	SMM-6104	\$544,950	Education & Interpretation (Prop 40)

TOTAL **\$2,951,435**

Or, the two findings (F3, B & E) described as "Return Priorly Overstated Overhead to SMMC" and "Return Priorly Overstated Vehicle Costs" that weren't quantified and which neither the SMMC nor the MRCA planned to implement.

Did they?

Gary.

In a message dated 6/21/2010 6:45:45 A.M. Pacific Daylight Time, marcde6919@yahoo.com writes:

Also copy of final San Gabriel Report