

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Michael Kirn, Acting City Manager
DATE: November 17, 2015
SUBJECT: Adopt a Resolution Amending Resolution 2015-098 to cancel a Budget Adjustment and Appropriation regarding Payment of Legal Fees to William McKinnon and Adopting a Budget Adjustment and Appropriation in the Amount of \$564,182.40 and the Source of Funds for the Previously Paid Legal Fees Awarded to William McKinnon.

APPROVAL FOR FORWARDING:



Michael T. Kirn, Acting City Manager

1
2 **ISSUE:** Consideration of a resolution amending Resolution 2015-98 to cancel a previous
3 budget adjustment and appropriation for payment of legal fees to William McKinnon and
4 adopting a revised budget adjustment and appropriation to charge all previous costs
5 against the General Fund.

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7 **RECOMMENDATION:** Adopt Resolution.

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9 **DISCUSSION:** On August 4, 2015 the City Council adopted Resolution 2015-98 which
10 approved a budget adjustment and authorized payment to William McKinnon in the amount
11 of \$555,766.58 plus interest for award of attorney’s fees as the result of a lawsuit brought
12 against the City by Grant Reynolds relating to the Public Trust Doctrine and the adequacy
13 of Kimball Dam bypass releases to the Napa River. The final amount paid to Mr. McKinnon
14 was \$564,182.40.

15 In late September of this year, City staff was advised by representatives from the
16 Department of Water Resources, Division of Financial Assistance that due to expenditures
17 exceeding previous and projected rate based revenue, the City would not be eligible for
18 low interest loans and/or grants from Drinking Water State Revolving Fund Program.

19 A requirement for eligibility is that rate based revenue be sufficient to cover operating
20 expenses. The Drinking Water State Revolving Fund Program does not recognize transfer
21 in of General Fund revenue to cover operating expenses, and this accounting transaction
22 places pressure on operating expenses exceeding rate based revenue.

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and Charging McKinnon Legal Fees to the General Fund
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23 The recommended resolution amends Resolution 2015-98 to cancel the previous budget
24 adjustment and appropriation related to payment of legal fees to Mr. McKinnon and
25 replaces it with a budget adjustment and appropriation that reflects the precise dollar
26 amount expended and that the General Fund will cover the cost and not the Water
27 Enterprise Fund.

28 **FISCAL IMPACT:** The total outstanding amount of the judgment, including interest was
29 \$564,182.40. The recommended action cancels the previous budget adjustment (01-4700-
30 4799, 02-3299 and 02-4132-4402) and appropriation contained in Resolution 2015-98. It
31 replaces it with a budget adjustment to the Fiscal Year 2015/16 Operating Budget to
32 transfer \$564,182.40 from the unappropriated General Fund -General Liability Claims to
33 the Legal Services Fund (01-4113-4410) and approves the appropriation of \$564,182.40
34 from the Legal Services Fund (01-4113-4410) as the source of funds for the previous paid
35 legal fees awarded to William McKinnon. No additional fees or costs will be incurred as a
36 result of this action. It is a budgetary and accounting measure to strengthen the City's
37 Water Enterprise Fund.

38 **ATTACHMENTS:**

- 39 1. Proposed Resolution
40 2. Resolution No. 2015 -098

RESOLUTION NO. 2015-XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,
COUNTY OF NAPA, STATE OF CALIFORNIA, AMENDING
RESOLUTION 2015-098 TO CANCEL A BUDGET ADJUSTMENT AND
APPROPRIATION REGARDING PAYMENT OF LEGAL FEES TO
WILLIAM MCKINNON AND ADOPTING A BUDGET ADJUSTMENT
AND APPROPRIATION IN THE AMOUNT OF \$564,182.40 AND THE
SOURCE OF FUNDS FOR THE PREVIOUS PAID LEGAL FEES
AWARDED TO WILLIAM MCKINNON

12 **WHEREAS**, in July 2014, the state Appellate Court determined that the
13 attorney representing Grant Reynolds, William McKinnon, be awarded attorney fees for
14 his efforts in addressing a Public Trust Doctrine issue related to water bypass and the
15 operation of Kimball Dam in Calistoga and remanded the award of fees to the Napa
16 Superior Court; and

17
18 **WHEREAS**, in April 2015 the Napa Superior Court granted attorney fees in an
19 effective amount of \$575,203.57 plus interest to William McKinnon; and

20
21 **WHEREAS**, On July 17, 2015 the Napa County Superior Court ordered Mr.
22 McKinnon to pay the City \$19,436.99 as sanctions for his frivolous and bad faith
23 actions related to his recordation of an abstract of judgment and levying of a writ of
24 execution on city bank accounts; and

25
26 **WHEREAS**, the Napa County Superior Court also ordered the sanction amount
27 was to be deducted from the amount the City owes to Mr. McKinnon in attorney's fees
28 which reduces the amount owed by City to \$555,766.58 plus interest; and

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30 **WHEREAS**, on August 4, 2015 the City Council reviewed the recommendation of
31 staff on this matter at public meeting and considered public testimony on this matter and
32 adopted Resolution 2015-098 which authorized the expenditure of funds to pay the
33 subject attorney fees and made appropriations and budget adjustments to accomplish
34 this objective; and

35
36 **WHEREAS**, in August 2015 Mr. McKinnon was paid \$564,182.40 in accordance
37 with the directive of the Superior Court and Resolution No. 2015-098; and

38
39 **WHEREAS**, In late September, 2015 City staff was advised by representatives
40 from the Department of Water Resources, Division of Financial Assistance that the City
41 is not eligible for low interest loans and/or grants from Drinking Water State Revolving
42 Fund Program due to Water Enterprise expenses exceeding rate based revenue; and

43
44 **WHEREAS**, the Drinking Water State Revolving Fund Program does not
45 recognize the transfer in of General Fund revenue to cover operating expenses,

46 including award of legal fees, and the accounting transaction authorized by Resolution
47 2015-098 results in operating expenses exceeding rate based revenue; and
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49 **WHEREAS**, an amendment to Resolution 2015-098 to allow an appropriation
50 and budget adjustment to take expenditures of \$564,182.40 away from the Water
51 Operations Fund Account 02-4132-4402 and charge entirely to the Legal Services Fund
52 Account 01-4113-4410 will improve the City's eligibility for funding through the Drinking
53 Water State Revolving Fund Program.
54

55 **NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of
56 Calistoga hereby amends Resolution 2015-098 as follows:
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58 1. That the budget adjustment to the Fiscal Year 2015/16 Operating Budget
59 to transfer \$415,000 (01-4700-4799) from the unappropriated General
60 Fund -General Liability Claims to the Water Enterprise Fund (02- 3299) in
61 the form of a loan to be repaid by the Water Enterprise Fund at a future
62 date is cancelled, and the appropriation of \$564,182.40 from the Water
63 Enterprise Fund (02-4132-4402) is cancelled.
64

65 2. That the City Council of the City of Calistoga hereby approves a budget
66 adjustment to the Fiscal Year 2015/16 Operating Budget to transfer
67 \$564,182.40 from the unappropriated General Fund -General Liability
68 Claims) to the Legal Services Fund (01-4113-4410) and approves the
69 appropriation of \$564,182.40 from the Legal Services Fund (01-4113-
70 4410) as the source of funds for the previous paid legal fees awarded to
71 William McKinnon.
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73 **PASSED, APPROVED AND ADOPTED** by the City Council of the City of
74 Calistoga at a regular meeting held this **17th day of November, 2015**, by the following
75 vote:
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77 **AYES:**
78 **NOES:**
79 **ABSTAIN:**
80 **ABSENT:**
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83 _____
CHRIS CANNING, Mayor

84 **ATTEST:**
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KATHY FLAMSON, City Clerk