

**RESOLUTION NO. 2015-131**

**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**

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

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

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

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

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

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

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

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

including award of legal fees, and the accounting transaction authorized by Resolution 2015-098 results in operating expenses exceeding rate based revenue; and

**WHEREAS**, an amendment to Resolution 2015-098 to allow an appropriation and budget adjustment to take expenditures of \$564,182.40 away from the Water Operations Fund Account 02-4132-4402 and charge entirely to the Legal Services Fund Account 01-4113-4410 will improve the City's eligibility for funding through the Drinking Water State Revolving Fund Program.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Calistoga hereby amends Resolution 2015-098 as follows:

1. That the budget adjustment to the Fiscal Year 2015/16 Operating Budget to transfer \$415,000 (01-4700-4799) from the unappropriated General Fund -General Liability Claims to the Water Enterprise Fund (02- 3299) in the form of a loan to be repaid by the Water Enterprise Fund at a future date is cancelled, and the appropriation of \$564,182.40 from the Water Enterprise Fund (02-4132-4402) is cancelled.
2. That the City Council of the City of Calistoga hereby approves a budget adjustment to the Fiscal Year 2015/16 Operating Budget to transfer \$564,182.40 from the unappropriated General Fund -General Liability Claims) to the Legal Services Fund (01-4113-4410) and approves the appropriation of \$564,182.40 from the Legal Services Fund (01-4113-4410) as the source of funds for the previous paid legal fees awarded to William McKinnon.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Calistoga at a regular meeting held this 17<sup>th</sup> day of **November, 2015**, by the following vote:

**AYES:** Councilmembers Barnes, Kraus and Lopez-Ortega, Vice Mayor Dunsford and Mayor Canning  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** None

  
**CHRIS CANNING, Mayor**

**ATTEST:**

  
**KATHY FLAMSON, City Clerk**