



**APPROVED**  
**August 25, 2008**

**MINUTES**  
**of the Regular Meeting**  
**Monterey Regional Water Pollution Control Agency**  
**Board of Directors**  
**July 28, 2008**

**1. CALL TO ORDER**

The Regular Meeting of the Board of Directors of the Monterey Regional Water Pollution Control Agency was Called to Order by Chair Russell at 7:04 p.m., on Monday, July 28, 2008, in the Board Room at 5 Harris Court, Building D, Monterey, California.

**2. PLEDGE OF ALLEGIANCE**

Mr. Stefani led the Pledge of Allegiance.

**3. ROLL CALL**

**BOARD MEMBERS PRESENT:**

|                              |   |
|------------------------------|---|
| Joe Russell, Chair           | Del Rey Oaks, Mayor                         |
| Dave Pendergrass, Vice Chair | Sand City, Mayor                            |
| Ron Stefani                  | Castroville Community Services District     |
| Kenneth Nishi                | Marina Coast Water District, Vice President |
| Lou Calcagno                 | Monterey County, Supervisor                 |
| Gage Dayton                  | Moss Landing County Sanitation District     |
| Steve Bloomer                | Seaside, Mayor Pro Tem                      |
| Vacant – Ex-Officio          | U.S. Army, Representative                   |

**BOARD MEMBERS ABSENT:**

|                   |                                    |
|-------------------|------------------------------------|
| Ramiro Cortez     | Boronda County Sanitation District |
| Jeff Haferman     | Monterey, Councilmember            |
| Dan Cort          | Pacific Grove, Mayor               |
| Gloria De La Rosa | Salinas, Mayor Pro Tem             |

**MRWPCA STAFF PRESENT:**

|                   |                                      |
|-------------------|--------------------------------------|
| Keith Israel      | General Manager                      |
| Brad Hagemann     | Assistant General Manager            |
| Ron Wellington    | Legal Counsel                        |
| John Tiernan      | Director of Admin Services/Deputy GM |
| Tom Buell         | Director of Finance                  |
| Bob Holden        | Principal Engineer                   |
| Lindsay Synstebly | Customer Service Supervisor          |
| Betty Nebb        | Executive Assistant                  |

**OTHERS PRESENT:** Carl Niizawa – City of Salinas  
Bjorn Lundegard – City of Seaside

**4. PUBLIC COMMENTS**

At 7:05 p.m., Chair Russell opened and closed Public Comments.

**5. CONSENT AGENDA**

**ACTION TAKEN:** On a motion by Mr. Pendergrass, seconded by Mr. Bloomer, the Board unanimously approved the Consent Agenda, Items A through G as follows:

- A. Approve Board Meeting Minutes/Report for Regularly Scheduled Board Meeting of June 30, 2008**
- B. Receive Comparison Percentage of Budget Expended Through June 2008 vs. 2007**
- C. Receive Check Register – June 2008**
- D. Receive Plant Flows and Effluent Quality for Connected Agencies, Plus Flow Charts for Salinas, Monterey Peninsula, Marina Plant, Fort Ord, and Castroville for June 2008**
- E. Receive Actual vs. Budgeted Fiscal Year 2007/08 Expenditures for the**
- F. Receive Actual vs. Anticipated Fiscal Year 2007/08 Revenues from Capacity Charges**
- G. Receive Residential Dwelling-Unit Aggregate as of June 30, 2008**

**6. PUBLIC HEARINGS**

- A. Staff Report for Amending Regulations Regarding MRWPCA Ordinance for Wastewater Discharge**

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Mr. Hagemann explained the changes to the Wastewater Discharge Ordinance (Sewer Use Ordinance) are proposed in order to be consistent with the Federal regulations and 40 Code of Federal Regulations (CFR). US EPA representatives and the state regulators have reviewed and commented on the proposed changes and concur this would bring our Ordinance into compliance with the existing regulations. A Public Notice announcing the updates to the Ordinance was published and no additional comments were received.

**ACTION TAKEN: On a motion by Mr. Calcagno, seconded by Mr. Bloomer, a roll call vote was taken and the Board unanimously approved adoption of MRWPCA Ordinance 2008-01, Amending Ordinance No. 92-02, in part, to Establish Regulations for the Interception, Treatment and Disposal of Sewage and Wastewater; Providing for and Requiring Charges and Fees therefore; and Fixing Penalties for the Violations of said Regulations. (7 affirmative votes and 4 absences).**

**B. Staff Report on Proposed User Fee Increase**

Mr. Tiernan introduced the MRWPCA Ordinance 2008-02, to increase our sewer user rates. All users were notified 45 days in advance of the change and to date we have not received any written protests. He stated that over the last 17 years, our user fees have increased only a total of \$1.80 and remain one of the lowest rates in the state. The residential rate will change from \$10.75 to \$11.10 – a 3.3% increase.

Mr. Tiernan indicated a new category of users would be included this year for mobile washers with an annual fee of \$25. The Storm Water Committee recommends prohibition of wash water discharge into the storm water drains; new state regulations mandate wash water be discharged to the sewer system. Discussion followed with Mr. Tiernan clarifying that annual payments would be made when business licenses are granted and/or renewed and that wash water will be captured and discharged into sewer manholes or brought to the regional treatment plant.

Mr. Calcagno continued the discussion with specific questions about how the water is collected and Mr. Tiernan stated they are supposed to have devices that allow them to collect the water. Mr. Stefani noted when fire engines are cleaned, a rubber berm is beneath to collect the water that is pumped into a holding tank.

Mr. Niizawa, City of Salinas, stated Salinas doesn't have regulations about residential car washes – a professional who goes to a residence would not be prohibited from allowing car wash water to go into the storm drain. However, commercial licensed washers who go to businesses to clean vehicles would be prevented from utilizing the storm drain for water disposal.

In response to a question about regulations, Mr. Pendergrass stated the Monterey Peninsula Water Management District focuses more to conservation and does not have specific ordinances for situations like this.

**ACTION TAKEN: On a motion by Mr. Pendergrass, seconded by Mr. Bloomer, a roll call vote was taken and the Board unanimously approved adoption of MRWPCA Ordinance 2008-02, Amending Ordinance No. 2007-02, in part, to Change the MRWPCA User Fees, effective August 1, 2008. (7 affirmative votes and 4 absences).**

**6. COMMITTEE REPORTS AND RELATED ACTION ITEMS**

**A. Budget/Personnel Committee**

**1. Receive and Approve Committee Minutes/Report of July 14, 2008**

Mr. Nishi inquired about the Ocean Outfall Inspection and Maintenance Project contract and expressed concern that the low bid may have been chosen without enough regard for safety. Mr. Hagemann stated the three lowest bids were between \$76,000 and \$90,000 and Ms. Gonzalez, our Lead Engineer, confirmed that the two low bidders had a superb safety record.

Mr. Holden added that in the engineering evaluation the consensus was that lowest bidder was the safest firm and the best firm. Associated Pacific Constructors Inc. was able to bid lower because they have such a robust program and equipment and are able to complete the work considerably faster than the other firms – within a few days, as opposed to weeks. The decision was positive in every way as this firm represents the best quality, the fastest completion time with less staff time involved, as well as the cheapest cost.

**ACTION TAKEN: On a motion by Mr. Pendergrass, seconded by Mr. Stefani, the Board unanimously approved the Budget/Personnel Committee Minutes for Monday, July 14, 2008, with the following recommendations:**

- **That the Board approve contracts for:**
  - **1) Ocean Outfall Inspection and Maintenance Project to Associated Pacific Constructors, Inc. in the amount of \$76,000**
  - **2) Facility Coating Project (Year 3) to Techno Coatings, Inc. in the amount of \$410,026 (\$376,318 to be paid by the Agency, \$33,708 by MCWRA), and**
  - **3) As-Built Updates Project to HDR Engineering Inc. at a cost not to exceed \$75,000 during FY 08/09.**

**B. Recycled Water Storage Committee**

**1. Receive and Approve Committee Minutes/Report of July 17, 2008**

**ACTION TAKEN:** On a motion by Mr. Pendergrass, seconded by Mr. Bloomer, the Board unanimously approved the Recycled Water Storage Committee Minutes for Thursday, July 17, 2008, with the following recommendations:

- **Information Only – No Action Taken.**

**8. INFORMATIONAL ITEMS**

**A. Fort Ord Update**

No questions or comments.

**B. Reclamation Project Status Summary**

Mr. Israel informed the Board that for 24 of the 28 days this month the Regional Treatment Plant has run at maximum recycled water capability with basically no discharge at all to the ocean. The staff is doing a great job of producing recycled water.

**C. Strategic Planning Goals (2008-2011)**

Mr. Israel stated the updated Strategic Planning Goals includes the 2005-2008 goal that the City of Salinas requested. Staff was continuing work on that goal even though it was not part of the updated package. This goal will identify future waste water needs, complete an evaluation of alternatives to provide service and prepare a financial menu of options to fund any needed conveyance capacity increases for Boronda, Salinas, Castroville, Moss Landing, North County and the greater Salinas area.

**9. CORRESPONDENCE**

Chair Russell introduced the MRWPCA letter to the Editor of the Salinas Californian regarding the pharmaceutical waste disposal. Mr. Israel stated he was pleased that the newspaper printed the letter as written.

**10. STAFF REPORTS**

**A. General Manager/Legal Counsel**

Mr. Israel acknowledged the FY 2008/09 Budget was presented to each member of the Board and commended staff for the great job putting the information together. He also announced next month's CASA Wastewater Conference in Monterey,

September 20-23, and encouraged members to review the agenda for programs that could be of interest.

Mr. Hagemann mentioned the successful tour with the agricultural secretaries from 13 western states that took place last week at the RTP. Approximately 60 – 65 people participated and staff received lots of compliments on the tour. He commended Mr. Holden and Dr. Crook for their presentations and Ms. Harris for her great job of organizing the tour and meeting. Chair Russell acknowledged his privilege to welcome the group that included participants from Canada. He was able to join the group that evening for a dinner meeting that included speeches from Mr. Leon Panetta and Mr. A.G. Kawamura, California Secretary of Agriculture.

**B. Department Heads**

Mr. Tiernan informed the members we have just received notification from Government Finance Officers Association (GFOA) that we will be receiving a Certificate of Excellence in Financial Reporting for the third straight year. He offered kudos to our finance staff and indicated a plaque will be received soon.

**C. Presentation: Update on MRWPCA's Projects within the Regional Water Plan**

Mr. Holden provided an update on our project within the Regional Water Plan. The regional plan has been submitted to the PUC on behalf of MCWD, MCWRA, our agency and Cal Am. The regional plan sees the ASR wells, in cooperation between Cal Am and Monterey Peninsula Water Management District, as one of the first things that can be brought on line, as well as the Sand City desal which combine for about 1,600 AFY. The group further expects the Salinas River water treatment of approximately 10,000 AFY of Salinas River water to follow.

Mr. Calcagno stated that Castroville needs water and we could create a network to take care of all North County. He stressed the growers have been paying Zone 2C assessments to create the Salinas Valley Water Project, and they don't want to see the water moving out of the Salinas Valley.

Mr. Bloomer referred to the photographs showing examples of injection wells. Mr. Holden indicated the wells and electrical panels could be above ground, but don't need to be. Because of the low ground water table in our area, the wells and electrical panels could be installed below ground. Mr. Pendergrass added that photographs from Orange County may be helpful to illustrate how the injection wells are constructed for their replenishment project. Some discussion followed regarding the need to back wash the deep wells and how that would be handled.

Mr. Bloomer asked if the Monterey Regional Water Supply Plan included printed material that went out to the public and did not include our projects. Mr. Holden

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stated the initial project report did not include our projects; but a revised report that was sent to the PUC and Cal Am does include our project information. Mr. Wellington clarified that the report Mr. Bloomer referenced was dated May 1, 2008.

Mr. Israel stated that the overall plan contains only a summary of our projects. There was difficulty trying to get all the information related to the Urban Recycled Water Augmentation Project and the Seaside Basin Replenishment Project into the plan, so staff prepared a stand-alone document that the PUC and Cal Am accepted for environmental review.

Mr. Dayton asked about the project costs that are reflected in the report. Mr. Holden indicated that RMC put together the overall plan and developed a certain framework in which to put project costs. He stated staff provided cost estimates for our projects, but those estimates were adjusted. Mr. Calcagno asked about costs for water from the Salinas River and stressed that the growers who paid for the system in the CSIP area would expect some adjustment to lower their contributions.

Mr. Nishi stated the PUC will be doing the environmental work and come back with everybody's projects, all the options, all the costs and then the Commission will determine which pieces of the projects will make up this regional project. Mr. Calcagno expressed concern that the true costs are not there and Mr. Nishi concurred stating that "everyone is low balling their numbers."

In response to Mr. Dayton's concern regarding the PUC's criteria for evaluating these various plans, Mr. Holden explained our emphasis was on the environmental part because that is being reviewed now for an Environmental Impact Report. Mr. Israel added clarification stating that when RMC was contracted to prepare this work, they required some preliminary project cost estimates be put together even though it was not needed for the environmental review. The environmental review process will go on for the next six months; then project cost estimates are to be refined further. Mr. Holden added that staff is working hard to review project costs and to bring integrity and accuracy to the process.

Mr. Dayton wanted to be certain the Seaside Basin Replenishment Project was not being excluded or downgraded in the Regional Water Plan. He stated that treating the winter water and injecting it into the Seaside Basin is a way to solve some of our water problems on the Monterey Peninsula because it seems like a solution that is obtainable. Mr. Calcagno provided information to the Board regarding another option for utilization of the Moss Landing facility to bring solutions to the region's water crisis.

With no further discussion or questions, Chair Russell thanked Mr. Holden for his presentation.

**11. BOARD MEMBER COMMENTS**

Mr. Bloomer thanked the members for their questions and participation in the discussion.

Legal Counsel Wellington announced that Closed Session Item 12B, Negotiations with Marina Coast Water District and Monterey County Water Resources Agency would not be taken up this evening. The Board will discuss only Items A and C.

**[Chair Russell adjourned Open Session at 8:11 pm. After a short recess, Chair Russell called Closed Session to order at 8:16 pm.]**

**12. CLOSED SESSION**

**A. Conference with Labor Negotiator**

- i. Unrepresented Employee: Assistant General Manager  
Agency Negotiator: Keith Israel, General Manager
- ii. Unrepresented Employee: General Manager  
Agency Negotiator: Budget/Personnel Committee

**C. Conference with Legal Counsel – Anticipated Litigation**

(One Case), pursuant to Government Code Section 54956.9(b), in that based upon the advice of legal counsel there is a significant exposure to litigation against the Agency based upon the letter from Marina Coast Water District dated June 26, 2008 (see Agenda Item 14C) demanding a cure of an alleged Brown Act violation.

**[At 9:14 pm, the Board came back into Open Session.]**

**13. ANNOUNCEMENTS FROM CLOSED SESSION**

Legal Counsel stated the record should indicate the Board considered Closed Session Item 12A, Conference with Labor Negotiation and with regard to that matter, information was received by the Board and the matter has been agendized for action under Agenda Item 14 - Further Action Items.

With regards to Closed Session Item 12 C, Conference with Legal Counsel – Anticipated Litigation, Legal Counsel stated a specific announcement regarding that matter will be considered under agendized Item 14C, Consider Letter Request from Marina Coast Water District to Cure Alleged Brown Act Violation.

**14. FURTHER ACTION ITEMS**

**A. Compensation Adjustment for General Manager**

Chair Russell referred to the Memorandum from the General Manager. There was no discussion. Legal Counsel stated that for the record, the General Manager's memorandum requested a salary increase of 5%.

**ACTION TAKEN: On a motion by Mr. Calcagno, seconded by Mr. Bloomer, the Board approved the request contained in the memorandum from the General Manager regarding his salary. (6 votes in favor, 1 opposed)**

**B. Compensation Adjustment for Assistant General Manager**

Mr. Pendergrass stated Board consensus was that while the Assistant General Manager's talent and qualifications are without question; the Board would prefer to wait for a six-month review period in October to consider a compensation adjustment. Chair Russell also endorsed the AGM's performance and felt waiting the additional time would allow the Board to feel more comfortable looking at the total compensation package.

**ACTION TAKEN: On a motion by Mr. Pendergrass, seconded by Mr. Bloomer, the Board unanimously agreed to defer review of compensation adjustment for the Assistant General Manager until the Board Meeting in October 2008.**

**C. Consider Letter Request from Marina Coast Water District to Cure Alleged Brown Act Violation**

Chair Russell called on Legal Counsel Wellington to present this matter.

Mr. Wellington stated the Board discussed the matter relating to the demand that there be a cure relating to the report out announcement of action taken in a Closed Session on May 29, 2008. The letter states that "the minutes are unclear as to whether the PCA Board took an improper action" and then it makes the statement "this appears to state that action was taken in Closed Session on a policy matter, not on negotiations over real property." Mr. Wellington reported that it was the consensus of the Board in Closed Session this evening that there was not a Brown Act violation; however, the Board has determined that in order to clear the air on this issue, to remove uncertainty and to move forward in a cooperative manner, and to effect the cure in this matter, the Board has determined that it would be appropriate to further discuss this matter at this time and to explain in some detail the discussions that were held in the Closed Session on May 29 which resulted in the Negotiating Statement which was announced out by the Board. Mr. Wellington distributed the Statement and indicated which additions had been made to provide some additional clarification of this matter.

Mr. Wellington explained as a matter of context and for clarification that the Closed Session of May 29 concerned the proposed regional alternative to the Cal Am's Moss Landing desal project, and that was made clear specifically to the

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attorney/legal counsel for Marina Coast Water District who had inquired about the agenda item concerning negotiations with both Marina Coast Water District and Monterey County Water Resources Agency prior to that meeting.

Mr. Wellington stated that in the May 29<sup>th</sup> Closed Session, the General Manager reported several things:

- That he had been trying to include the agency's two long-term projects – the Regional Urban Water Augmentation Project and the Seaside Groundwater Replenishment Project – as components in the regional alternative project;
- That negotiations or discussions regarding the project had taken place by the other three parties and that MRWPCA/General Manager had not been advised or invited to participate;
- That the other parties, MCWD, MCWRA and Cal Am, as we discovered later, had had a meeting in which representatives were discussing the various projects and components of the alternative project with discussion aimed towards identifying recommended projects, or priority of projects. Again MRWPCA had not been included;
- That it was clear looking at various components as an overall part of this project, that the conveyance of or obtaining of an interest in MRWPCA's ocean outfall was a necessary component to that alternative regional project;
- That the "client draft" (prepared by RMC for Cal Am) had set a priority of or recommended projects (citing pages 3-7, 4-37 and 4-38) and that the Regional Urban Water Augmentation Project and the Seaside Groundwater Replenishment Project had fallen down to the bottom of the list and were "additional opportunities" and in fact, the footnote said "Additional recycled water projects may be mutually exclusive and depending upon the final irrigation component.";
- That with the alternative project's proposed increase of the CSIP, it looked like the CSIP was potentially going to take all of the recycled water including that water which MRWPCA was entitled to under the Third Amendment. The draft report (page 4-37) talks about "In the event there might be additional recycled water, then we will look at these other projects."

Mr. Wellington summarized that it appeared that the MRWPCA projects were not being discussed – they were not even being considered. The General Manager wanted to advise the Board and to receive direction from it on this matter because discussions were ongoing among representatives from MCWD, MCWRA and Cal Am about the various projects for the regional plan. It was also reported to the General Manager that in one of these meetings the question was asked "how can we not include the MRWPCA in these discussions/negotiations if we intend to use their

outfall?" And the answer was that all the City Councils and various Boards had seen the presentation of this project and said it looked like a good project; so there was no need to talk to the Agency Board.

After some discussion at the Closed Session of May 29, the Board indicated it was willing to discuss and negotiate a conveyance for an interest in the outfall; however, the Board needed to have some specific details and to know that use of the outfall would not be considered a foregone conclusion simply because there had been general concept approvals of the alternative regional project by our member agencies. And so the announcement out was, in effect, intended by the Board to be a statement of a negotiating position that the General Manager could use in his discussions with these other parties to negotiate as they considered inclusion of the MRWPCA's two projects and the use of our outfall as a foregone conclusion.

Mr. Wellington concluded that this discussion now explains in Open Session what occurred in the May 29<sup>th</sup> Closed Session, which complies with the request from Marina Coast Water District. He recommended that the Board consider a motion to adopt this Negotiation Statement, as clarified, and direct that a letter be sent to the Marina Coast Water District Board indicating what actions and steps the MRWPCA Board has taken tonight.

A motion was made by Mr. Bloomer and seconded by Mr. Pendergrass to adopt the Negotiating Position (with clarifications) and direct that a letter go to Marina Coast Board including this statement with the attachments that were referenced in the discussion. Chair Russell asked for any questions or comments.

Mr. Nishi stated that every member of this organization has already paid for the outfall, or the portion that they are using, so it is unclear what there is to negotiate. He continued by saying the water you (MRWPCA) has in the Third Amendment was so much water, but that wasn't going to be touched by this project. And if you are going to exclude the MCWRA and MCWD from the [Closed Session] discussions, then you have to exclude everyone else that's going to benefit from the regional project and that will include Castroville, Seaside, Del Rey Oaks, Moss Landing, Salinas. Basically MCWD doesn't understand why they are excluded but others, who are also part of the regional project, are allowed.

Mr. Wellington responded to the question about negotiating for the outfall stating there was an assumption that the outfall was going to be used for the regional project and yet there hadn't been any permission granted by the Board of this agency. Certainly it could be discussed and presumably something may be worked out.

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Mr. Nishi also made a point that the negotiations between Cal Am, MCWRA and Marina Coast were just meetings of the three entities and there was never an intention to exclude MRWPCA. Mr. Pendergrass called for the question.

**ACTION TAKEN: On a motion by Mr. Bloomer, seconded by Mr. Pendergrass, the Board approved the Statement of a Negotiation Position (as clarified) regarding the Regional Water Project and directed a letter be sent to Marina Coast Water District Board indicating what actions and steps the Board has taken to cure the alleged Brown Action violation. (6 votes in favor, 1 opposed)**

**15. ADJOURNMENT**

With no further business, Chair Russell adjourned the meeting at 9:35 p.m. to the next scheduled Board Meeting, in the Board Room at 5 Harris Court, Building D, on Monday, August 25, 2008, at 7:00 p.m.

*/s/Keith Israel*

\_\_\_\_\_  
Keith E. Israel, General Manager  
Secretary to the Board

*/s/ Joseph Russell*

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Joseph Russell, Chair  
MRWPCA Board of Directors