



**Approved
June 29, 2009
As Revised**

**MINUTES
of the Special Meeting
Monterey Regional Water Pollution Control Agency
Board of Directors
June 8, 2009**

1. CALL TO ORDER

The Special Meeting of the Board of Directors of the Monterey Regional Water Pollution Control Agency was Called to Order by Chair Calcagno at 7:02 p.m., on Monday, June 8, 2009, in the Board Room at 5 Harris Court, Building D, Monterey, California.

2. ROLL CALL

BOARD MEMBERS PRESENT:

Lou Calcagno, Chair	Monterey County, Supervisor
Ramiro Cortez	Boronda Community Services District
Ron Stefani	Castroville Community Services District
Joe Russell	Del Rey Oaks, Mayor
Kenneth Nishi Dan Burns	Marina Coast Water District, Member
Libby Downey [by conference call]	Monterey, Councilmember
Chris Orman	Moss Landing County Sanitation District
Dan Cort	Pacific Grove, Councilmember
Dave Pendergrass	Sand City, Mayor
Ralph Rubio	Seaside, Mayor
Vacant – Ex-Officio	U.S. Army, Representative

BOARD MEMBERS ABSENT:

Gloria De La Rosa, Vice Chair	Salinas, Mayor Pro Tem
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MRWPCA STAFF PRESENT:

Keith Israel	General Manager
Brad Hagemann	Assistant General Manager
Rob Wellington	Legal Counsel
John Tiernan	Director of Admin Services/Deputy GM
Bob Holden	Principal Engineer
Betty Nebb	Executive Assistant

OTHERS PRESENT: Bjorn Lundegard – Seaside
Carl Niizawa – Salinas
Chip Rerig – Monterey

3. PLEDGE OF ALLEGIANCE

Chair Calcagno asked Mr. Russell to lead the Pledge of Allegiance.

4. PUBLIC COMMENTS

At 7:05 p.m. with no comments, Chair Calcagno closed Public Comments.

5. SPECIAL ACTION ITEMS BEFORE THE BOARD

A. Review and Approve Revised Regional Urban Water Augmentation Project (RUWAP) Agreement with Marina Coast Water District

1. Receive staff report on meeting(s) with MCWD to review and revise RUWAP agreement

Mr. Israel stated that as a result of further staff and Ad Hoc Committee review, along with consideration of input from the public, it was felt that the April RUWAP MOU with Marina Coast Water District should be slightly updated to clarify and emphasize consistency with prior environmental/CEQA reviews. He noted that each member has a copy of the MOU showing changes highlighted in different colors: yellow shows changes made at our April 13 Board meeting when the MOU was approved; green relates to revisions that focus on environmental CEQA issues; gray shows parts that were edited or revised for clarity.

Mr. Israel led the members through the document providing comments for the changes noted in the MOU. Mr. Israel explained that MCWD has been the lead agency for CEQA for the project, but MRWPCA has a role as the “responsible” agency for this particular project and it is more clearly defined in paragraph 1.1. In paragraph 2, in order for MRWPCA to be consistent with the RUWAP EIR, when recycled water is considered for the Monterey Peninsula, a new or separate EIR will be completed for that project. Chair Calcagno clarified that the Monterey Peninsula is beyond the Ft. Ord boundary and includes Seaside, Del Rey Oaks, Monterey, and Pacific Grove.

In paragraph 3, Mr. Israel pointed out there was some rewording in this section to be sure this agreement is not a construction document, but that it indicates the parties may be doing various types of feasibilities as noted in the agreement. It also confirms that recycled water will be available and has listed the potential future uses of water together rather than spread out within the document.

In paragraph 4.1, material was added to address that MRWPCA will be responsible for an EIR on the RTP improvements; and because we are a federally funded facility, there will also be a NEPA requirement. In paragraph 4.2, it specifies that

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MRWPCA will be the agency to finance, construct, own and operate the RTP additions and will coordinate construction with MCWD's construction schedule of the backbone transmission facilities. Within 90 days of MCWD receiving financing for the backbone, MRWPCA must notify MCWD of preliminary financing commitment for the RTP additions. The document does specify that if MRWPCA does not have the financing or decides not to build the RTP additions, then MCWD acting as the lead agency under the RUWAP EIR may go ahead and complete those facilities at the plant. Mr. Israel explained that the intent of this is to be sure the facilities get built.

Mr. Rubio added that the language is there because we can't preclude CEQA – there is a no-build alternative required by CEQA and so we had to provide for that. Mr. Russell stated if that is the CEQA purpose, then it should also apply if MCWD is unable or not interested in going forward, MRWPCA should be able to come down and take over their part of the project. Mr. Russell also expressed concern about the requirement for MRWPCA to adhere to MCWD's schedule and if not, MCWD would have the right to take over our part of the project.

Mr. Rubio noted that if MCWD does not get financing for the backbone transmission facilities there is no trigger for MRWPCA to do anything. At that point this MOU could come back for a different iteration because of the changed condition.

Mr. Pendergrass reminded the members that at the Special Meeting in March, it was stated that there would be no agency attorney involved in formation of this agreement – that there would be an outside attorney approved by the committee. He stated an outside attorney would have been objective and could have pointed out issues that seemed biased. Mr. Pendergrass also objected to the part of the agreement that provides an option for MCWD to own and operation the facility at the RTP.

Mr. Russell expressed his opinion that this agreement does not obligate MCWD to do anything and that they do not seem interested in proceeding with the recycled water project, but are more focused on the proposed desalination operations. He added that there is no time limit set for them, so if they don't get financing for the RUWAP, it doesn't matter. He urged that the agreement eliminate the option for MCWD to take over the RTP facilities if MRWPCA doesn't meet MCWD's schedule.

Chair Calcagno asked how would it be possible for MCWD to run the facilities and what part of the RTP facilities would they operate. Mr. Israel replied the RTP additions for RUWAP include a pump station, a flow meter and a pipeline to our boundaries. It would be difficult to have another party maintain and operate these facilities because of the coordination of the recycled water for agriculture and other requirements of the plant. Mr. Israel continued by saying that he could not imagine that this would come to pass – he restated the requirements of CEQA must provide

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for the “what if” scenario and reconfirmed MRWPCA commitment to fulfill the agreement by constructing the RTP additions for the RUWAP.

Mr. Rubio addressed Mr. Pendergrass’s point about legal counsel stating that MRWPCA’s counsel and MCWD sat at the same table and worked together on this agreement to come up with appropriate language. There were also phone conferences with counsel to come to a consensus on the wording of the agreement.

Mr. Stefani asked about the financing that would be necessary for our part of the project and Mr. Israel responded that the RTP improvements would cost approximately \$3m. He continued by saying that there should be no problem for the agency to secure outside financing if necessary; but we also have available reserves if needed. MCWD has the greater obligation because they will need about \$27m for the pipeline and transmission facilities. With 90 days, staff feels it will not be difficult to come up with preliminary financing commitment. Mr. Russell reiterated his concern that not only does the financing give MCWD the “spring board” to come into the agency, but the failure to follow their schedule could get very argumentative as the project goes along. The agency shouldn’t be placed in that kind of position.

Mr. Rubio described the information gathered on the recent trip to Washington, DC and stated that while the talks were positive, Federal funding is still uncertain. In today’s environment, it is difficult to ensure that funding is available by a certain date. Until the time when MCWD gets their financing, there is nothing to do in terms of this MOU.

Mr. Russell expressed concern that the language in the MOU regarding our adherence to MCWD’s construction schedule gives them leverage that is not in our best interests. Mr. Pendergrass added that the CEQA and NEPA requirements also consider the capability of an entity to build and operate a facility and having a part of the agreement state that if we don’t meet a certain time frame, the operation and ownership would shift to MCWD is not acceptable.

Chair Calcagno asked the members to have some trust and to realize that with FORA, Monterey Peninsula cities, and the County there will be pressure for both parties to perform in compliance with the agreement. It is important not to get tied up with the language, but to know that there will be support from the community to have this project succeed.

Mr. Israel continued the review of the agreement noting that section 4.3 added some additional environmental language that was needed to provide compliance with CEQA. Section 5 contains edits for clarity and the following pages showed only a couple places where a few grammatical edits were provided.

Chair Calcagno asked when MCWD would be considering this agreement and Mr. Israel announced they would be reviewing it tomorrow evening at their regularly

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scheduled Board Meeting on Tuesday, June 9. Chair Calcagno asked Mr. Wellington to address language in the agreement that is a concern to the members.

Mr. Wellington acknowledged that while he had not been involved in the negotiations, once the language was set he had conversations with Mr. Lowrey (counsel for MCWD) and Mr. Israel. Although some alternate language was suggested regarding MRWPCA retaining control of operations on the RTP property, it was not completely satisfactory. He stated that concerns about the financing are probably not a real concern. Mr. Wellington stated part of the agreement that could be more problematic is the promise by MRWPCA: “MRWPCA shall coordinate the construction schedule for the MRWPCA RTP additions with the construction schedule for the MCWD backbone transmission facilities.” This is a clear obligation to meet their schedule and if we can’t, MCWD could take the agency to court.

Mr. Rubio stated that since MRWPCA has only a small part of the \$30m project, there shouldn’t be any problem to coordinate a schedule to construct. If we can’t do this, then the agency has serious problems. Mr. Stefani added that this language guarantees MCWD that the supply will be there one way or another. Mr. Russell added that typically construction projects have snags and the out for MCWD would be that we haven’t done something according to the schedule. Mr. Rubio countered that MRWPCA is covered in that regard by the language in the agreement that says there will be “close coordination” with the construction schedules.

Mr. Orman asked if the revision of the agreement addressed the issues brought forward by individuals and community groups and Mr. Wellington confirmed that was the case.

Mr. Calcagno asked for clarification of the project description in section 1.2 - “for redevelopment of the former Ft. Ord, 300 afy of recycled water could be provided for the Monterey Peninsula and an additional 300 afy of desalination water could be provided by MCWD.” Mr. Israel stated the 300 afy of desalination water comes from the original RUWAP (hybrid project) for MCWD to replace their old desal unit. The certified EIR is based on both recycled and desal water.

ACTION TAKEN: On a motion by Mr. Rubio, seconded by Ms. Downey, the Board approved the Revised Regional Urban Water Augmentation Project Agreement. A roll call vote was taken with nine members voting yes and with one nay vote (Mr. Russell stated that he reluctantly cast a negative vote).

Chair Calcagno congratulated the staff and counsel for their hard work on the agreement and acknowledged the work of the Board members who negotiated, past and present, to get this RUWAP MOU completed.

6. STAFF REPORTS

A. General Manager/Legal Counsel/Assistant General Manager

Mr. Israel announced that the Board of Supervisors would be considering the Planning and 3-Way agreements at the next Supervisors' meeting and confirmed staff would come back to this Board if there are changes. Chair Calcagno stated the Supervisors have solicited comments from the Farm Bureau, Land Watch and others to be sure to have input for all. There have been some revisions made to the MOU's however they represent an opportunity for the community to come together to make some progress.

Mr. Hagemann provided information about the recent fire in Salinas that resulted in fire suppression run off into the reclamation ditch. Staff has assisted in evaluating the contaminates identified in the water and whether it could be accepted (after pretreatment) in the MRWPCA sewer system. Mr. Niizawa stated there is approximately 5 million gallons of run off in the reclamation ditch and the city appreciates the cooperation received from the MRWPCA staff to remedy the situation.

7. BOARD MEMBER COMMENTS

Mr. Burns thanked the Board for their work on the agreement and for approving it tonight. He added that MCWD looked forward to approving it as well. He continued by saying MCWD has no intention of being involved in operations at the RTP – his experience with MRWPCA staff confirms his confidence in our operations.

8. ADJOURNMENT

With no further business, Chair Calcagno adjourned the meeting at 8:00 p.m. to the next regularly scheduled Board Meeting, in the Board Room at 5 Harris Court, Building D, on Monday, June 29, 2009, at 7:00 p.m.

/s/ Keith Israel

Keith E. Israel, General Manager
Secretary to the Board

/s/ Louis Calcagno

Louis Calcagno, Chair
MRWPCA Board of Directors