

LWL-32

Resolution No. 2010-20
Resolution of the Board of Directors
Marina Coast Water District
Adopting Findings and Mitigation Monitoring and Reporting Plan, and
Conditionally Approving Regional Desalination Project

April 5, 2010

RESOLVED by the Board of Directors (“Directors”) of the Marina Coast Water District (“MCWD”), at a special meeting duly called and held on April 5, 2010, at the business office of the District, 11 Reservation Road, Marina, California as follows:

WHEREAS, the Directors find as follows:

AUTHORITY

1. This resolution is adopted pursuant to the County Water District Law, Sections 30000 and following, of the California Water Code, and pursuant to the California Environmental Quality Act (“CEQA”), codified at Sections 21000 and following of the Public Resources Code, and the CEQA Guidelines codified at Title 14, Sections 15000 and following of the California Code of Regulations.

PURPOSE

2. By conditionally approving MCWD’s participation in a Regional Desalination Project through a Water Purchase Agreement by and among MCWD, the Monterey County Water Resources Agency (“MCWRA”) and California American Water Company (“CAW”), and a Settlement Agreement between MCWD, MCWRA, CAW and various other interested parties in California Public Utilities Commission (“CPUC”) Proceeding A.04-09-019, the Directors intend to augment urban water supplies for the region, including MCWD’s service area, through a fiscally and environmental responsible project.

BACKGROUND

3. MCWD. MCWD provides water service within a service area that includes the City of Marina, lands in the vicinity of the City of Marina, and the former Fort Ord.

3.1 MCWD acts on behalf of persons served within the MCWD service area to furnish water for beneficial use, to protect the groundwater underlying MCWD, and to conserve the water supply for future as well as present use.

3.2 MCWD has a history and a policy of cooperating with other regional agencies to augment and protect water supplies and to address regional environmental issues.

4. MCWRA. MCWRA’s jurisdictional boundaries are coextensive with the external boundaries of the County of Monterey, and within those boundaries, MCWRA is responsible under the Monterey County Water Resources Agency Act, among other things, to increase, and prevent the waste or diminution of the water supply, including the control of groundwater

extractions as required to prevent or deter the loss of usable groundwater through intrusion of seawater and the replacement of groundwater so controlled through the development and distribution of a substitute surface supply, and to prohibit groundwater exportation from the Salinas Basin.

5. CAW. California American Water Company is a regulated public utility providing water service in California under the jurisdiction of the CPUC. CAW provides water service in various areas within California, including a service area on the Monterey Peninsula adjacent to MCWD service area and within the jurisdiction of MCWRA.

6. Application 04-09-019. On September 20, 2004, CAW filed Application No. 04-09-019 seeking approval of the Coastal Water Project (as defined in Application 04-09-019) from the California Public Utilities Commission (“CPUC”). Application No. 04-09-019 was amended on July 14, 2005, and the application remains pending before the CPUC.

6.1 Application A.04-09-019 requests the issuance of a Certificate of Public Convenience and Necessity (“CPCN”) to construct and operate a desalination project, the “Coastal Water Project,” to provide water for CAW’s service area on the Monterey Peninsula.

6.2 MCWD, MCWRA and CAW are active parties in the CPUC proceedings for Application No. 04-09-019. The CPUC proceedings are hereinafter referred to as “A. 04-09-019”.

7. Water Purchase Agreement. The proposed Water Purchase Agreement by and among MCWD, MCWRA and CAW concerns the regional desalination water supply project element of “Phase I of the Regional Project” as described in the CPUC’s Final EIR for the Coastal Water Project, described in section 8 of these findings. This project is referred to in the Water Purchase Agreement and hereafter in this resolution as the “Regional Desalination Project.”

7.1 The Water Purchase Agreement, to which CAW, MCWD, and MCWRA would be parties, sets forth terms under which the Regional Desalination Project could be implemented.

7.2 Under the Water Purchase Agreement, MCWRA would construct, own, and operate a series of wells that would extract brackish water and a portion of the pipeline and appurtenant facilities (collectively, “Intake Facilities”) that would convey the brackish water to a desalination plant and related facilities that would be owned and operated by MCWD (collectively, “MCWD Facilities”).

7.3 The MCWD Facilities would include a pipeline and connection to discharge brine from the desalination plant to connect to the regional outfall facilities owned and operated by the Monterey Regional Water Pollution Control Agency (“MRWPCA”), pursuant to an “Outfall Agreement” dated January 20, 2010, between MCWD and MRWPCA.

7.4 The Water Purchase Agreement would be attached to a settlement agreement for A.04-09-019.

8. Settlement Agreement. On November 5, 2009, the CPUC ordered that its A.04-09-019 proceedings be held in temporary abeyance so that the parties could devote their resources to settlement discussions.

8.1 Certain parties to the CPUC proceedings, including CAW, MCWD, and MCWRA (collectively, the “Settling Parties”), have prepared a “Settlement Agreement” which provides for settlement of the CPUC proceeding pursuant to the terms of the Water Purchase Agreement.

8.2 In order for the Regional Desalination Project to proceed pursuant to the Water Purchase Agreement, the CPUC must approve a settlement on such terms and issue CAW a CPCN to construct and operate the CAW facilities that are part of the Regional Desalination Project.

8.3 Pursuant to Article 12 of the CPUC’s Rules of Practice and Procedure, the Settling Parties must present the Settlement Agreement, the Water Purchase Agreement, and any other related agreements to the CPUC for approval by means of a Motion to Approve Settlement.

8.4 Upon motion by the Settling Parties, the CPUC can approve the proposed settlement, disapprove the proposed settlement, or disapprove the proposed settlement with suggested revisions.

8.5 If the CPUC disapproves the proposed settlement with suggested revisions, the Settling Parties would have the opportunity to accept the CPUC’s suggested revisions, at which point the CPUC would either approve the revised version of the proposed settlement, or disapprove the revised proposed settlement and reinitiate its A.04-09-019 proceedings.

8.6 If the CPUC approves the proposed settlement or approves a revised version of the proposed settlement, the CPUC will issue a decision approving the settlement and issuing the CPCN to CAW.

8.7 The CPUC’s decision approving settlement and issuing the CPCN would constitute the lead agency’s approval of the Regional Desalination Project under CEQA.

8.8 MCWD intends to jointly file a motion with the Settling Parties for the CPUC to approve the Settlement Agreement, Water Purchase Agreement, and any other related agreements.

8.9 In order to request CPUC approval of the Settlement Agreement, MCWD intends to execute the Settlement Agreement and Water Purchase Agreement, in conjunction with MCWRA and CAW, contingent on final approval of the CPUC (“Conditional Project Approval”).

8.10 If the CPUC approves the settlement proposal, MCWD intends that the contingency will be satisfied, the condition to final approval will be removed, MCWD’s action will become final, and the Water Purchase Agreement and Settlement Agreement will become effective upon approval by the CPUC.

8.11 If the CPUC disapproves the settlement proposal with revisions, MCWD intends to evaluate the proposed revisions and, if acceptable, jointly file a second motion with the Settling Parties for approval of the revised settlement proposal, following reconsideration and review of the Final EIR and re-adoption of findings and mitigation measures (“Second Conditional Project Approval”).

8.12 If the CPUC approves the settlement proposal with revisions, MCWD intends to reaffirm its Second Conditional Project Approval following reconsideration and review of the Final EIR and re-adoption of findings and mitigation measures.

CEQA COMPLIANCE

9. In Decision D.03-09-022, the CPUC designated itself as the lead agency for environmental review of the Coastal Water Project under CEQA.

9.1 On January 30, 2009, the CPUC, acting as Lead Agency under CEQA in A.04-09-019, issued a Draft Environmental Impact Report (“DEIR,” State Clearinghouse No. 200610104) analyzing the potential environmental impacts of a project designated the “Coastal Water Project” and alternatives to it. The CPUC duly received and analyzed extensive public comment on the DEIR. MCWD, MCWRA, and CAW provided comments on the DEIR.

9.2 On December 17, 2009, in Decision No. 09-12-017 which was issued in Application 04-09-019, the CPUC, as Lead Agency, duly certified a Final Environmental Impact Report which includes a description and analyzes the environmental impacts of an alternative project variously referred to in that Final Environmental Impact Report as the “Regional Alternative” and the “Regional Project” and “Phase I of the Regional Project.” The principal element of that alternative project is a regional desalination water supply project, with other smaller elements.

9.3 On March 24, 2010, an addendum to the Final EIR (“Addendum”) was released, which responds to comment letters that had been inadvertently omitted from the Final EIR and includes an errata to the Final EIR. The term “Final EIR” as used in this resolution includes the addendum.

9.4 The Final EIR designates MCWD as a responsible agency under CEQA.

9.5 Pursuant to CEQA Guidelines Sections 15096, 15162, 15164 and 15063 and in consultation with other affected agencies and entities, MCWD, as a responsible agency for approval of the Regional Desalination Project, has reviewed and considered the Final EIR before taking action on the Water Purchase Agreement and the Settlement Agreement.

9.6 The Directors reviewed and discussed the Final EIR at a meeting on November 17, 2009, and discussed the certified Final EIR at meetings in February (excepting the Addendum) and March 2010, and during their meeting on April 5, 2010, and provided the opportunity for the public to give comments on the Final EIR during the April 5 meeting.

9.7 The Directors have reviewed and considered the Final EIR and Addendum in their entirety and the entire record of proceedings before MCWD, as defined in the Findings

attached hereto as Attachment A, and find that the Final EIR and Addendum are adequate for the purpose of approving MCWD's approval and implementation of the Regional Desalination Project pursuant to the Water Purchase Agreement and Settlement Agreement, and MCWD hereby relies upon the contents of those documents and the CEQA process for its CEQA compliance.

9.8 MCWD intends to conduct all future activities under the Water Purchase Agreement and the Settlement Agreement in accordance with the Final EIR; or, alternatively, and if needed to comply with CEQA, MCWD would amend, supplement or otherwise conduct new environmental review prior to directly or indirectly committing to undertake any specific project or action involving a physical change to the environment related to the implementation of the Regional Desalination Project pursuant to the Water Purchase Agreement and the Settlement Agreement.

9.9 The Directors have determined that the Regional Desalination Project will result in the following benefits: (1) diversify and create a reliable drought-proof water supply; (2) protect the Seaside basin for long-term reliability; (3) address CAW's obligations to find alternative water sources to reduce diversions from the Carmel River; (4) protect listed species in the riparian and aquatic habitat below San Clemente Dam; (5) protect the local economy from the effects of an uncertain water supply; and (6) minimize water rate increases by creating a diversified water supply portfolio.

9.10 At the direction of the Directors, MCWD has made written findings for each significant effect associated with the MCWD Facilities and prepared a Statement of Overriding Considerations, which explains that the benefits of the Project outweigh any significant and unavoidable impacts on the environment and has prepared a Mitigation Monitoring and Reporting Plan ("MMRP"), which includes all mitigation measures designed to substantially lessen or eliminate the adverse impact on the environment associated with construction and operation of the MCWD Facilities, as well as a plan for reporting obligations and procedures by parties responsible for implementation of the mitigation measures. A copy of the Findings and Statement of Overriding Considerations is attached to this resolution as **Attachment A**. A copy of the MMRP is attached to the Findings.

9.11 The Directors intend to approve the Findings and Statement of Overriding Considerations and the MMRP.

ACTION

10. By this resolution, the Directors make and adopt appropriate Findings, Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Plan and conditionally approve MCWD's participation in the Regional Desalination Project pursuant to a Water Purchase Agreement between MCWD, MCWRA and CAW, and a Settlement Agreement between MCWD, MCWRA, CAW and various other interested parties to settle California Public Utilities Commission Proceeding A.04-09-019, "In the Matter of the Application of California-American Water Company (U 210 W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit

in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates."

GENERAL MANAGER'S RECOMMENDATION

11. MCWD's General Manager recommends that the Directors conditionally approve MCWD's participation in the Regional Desalination Project by conditionally approving the Water Purchase Agreement and Settlement Agreement for execution in the form presented to the Board in open session on April 5, 2010.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Marina Coast Water District adopt the foregoing findings; and

1. The Directors hereby certify, pursuant to CEQA Guidelines §§ 15050(b) and 15096(f), that they have reviewed and considered the Final EIR as certified by the CPUC on December 17, 2009 in Decision D.09-12-017 and the Addendum that was released on March 24, 2010.
2. The Directors hereby approve and adopt the Findings attached hereto as **Attachment A**, which are incorporated herein, pursuant to CEQA Guidelines §§ 15091 and 15096(h).
3. The Directors hereby approve and adopt the Mitigation Monitoring and Reporting Plan identified in the Findings and attached to the Findings, pursuant to CEQA Guidelines § 15096(g).
4. The Directors hereby conditionally approve MCWD's participation in the Regional Desalination Project pursuant to the Water Purchase Agreement and the Settlement Agreement, contingent on final approval by the CPUC.
5. The Directors hereby authorize the President and the General Manager and Secretary to execute the Water Purchase Agreement and the Settlement Agreement pursuant to this resolution and conditional approval substantially in the form presented to the Board at the April 5, 2010, meeting, and direct the General Manager and staff to take all other actions that may be necessary to effectuate and implement this resolution and Conditional Project Approval.

PASSED AND ADOPTED on April 5, 2010, by the Board of Directors of the Marina Coast Water District by the following roll call vote:

Ayes: Directors Gustafson, Moore, Lee, Nishi

Noes: Directors None

Absent: Directors Burns

Abstained: Directors None



Kenneth K. Nishi, President

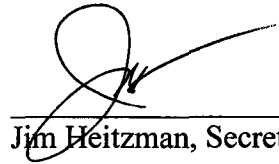
ATTEST:



Jim Heitzman, General Manager

CERTIFICATE OF SECRETARY

The undersigned Secretary of the Board of the Marina Coast Water District hereby certifies that the foregoing is a full, true and correct copy of Resolution No. 2010-20 adopted April 5, 2010.



Jim Heitzman, Secretary