

**EXHIBIT LWL-11**

# MEMORANDUM OF UNDERSTANDING

## PLANNING FOR USE OF

### MRWPCA OUTFALL FOR BRINE DISPOSAL

This Memorandum of Understanding ("MOU") is made by and between Marina Coast Water District ("MCWD") and the Monterey Regional Water Pollution Control Agency ("the MRWPCA"), individually each a Party and collectively the Parties to this MOU, who agree as follows:

1. Recitals. MRWPCA owns and operates the Regional Treatment Plant ("RTP") for wastewater from the northern region of Monterey County. The RTP includes an ocean outfall ("outfall") that has available, unused capacity. MCWD wishes to use a portion of the available capacity to transfer desalination brine for ocean discharge. MRWPCA wants to cooperate with MCWD to enable such use of the outfall. This Agreement is intended to provide the terms and conditions for planning, evaluating and negotiating such use of the outfall.

2. Environmental Analysis. Upon execution of this Planning Agreement, MRWPCA acting as lead agency, in consultation with MCWD, will undertake immediately and prosecute diligently to completion, at MCWD's cost, analysis pursuant to the California Environmental Quality Act of using the outfall for desalination brine disposal.

3. Technical Feasibility Analysis. Upon execution of this Planning Agreement, MCWD and MRWPCA, at MCWD's cost and with MCWD consultation will retain a consultant to conduct the analysis and make recommendations, will cooperatively analyze within 60 days the technical and financial feasibility of using the outfall for brine discharge.

4. Negotiation of Terms for Use. If the analyses conducted pursuant to paragraphs 1 and 2 of this Planning Agreement demonstrate that MCWD's proposed use of the outfall for brine discharge is technically feasible and would not have immitigable, adverse, environmental impacts, MCWD and MRWPCA will meet and confer in good faith to negotiate the terms and conditions of MCWD's use of the outfall for brine disposal. Such negotiations will include consideration of any mitigation measures determined necessary by the environmental analysis and measures such as additional facilities and scheduling needed to introduce MCWD's brine into the outfall and to address any issues identified by the technical feasibility analysis. Such negotiations will also include responsibility for regulatory compliance and allocation of risk from such use of the outfall, and the concept that MCWD will pay all costs associated with such use of the outfall, including, without limitation, for any debt service on funds borrowed by MCWD to pay capital costs in connecting to the outfall, and proportional costs of operating and maintaining and replacing the outfall, including costs of administration and insurance, increased costs from any necessitated purchase of supplemental power and increased regulatory costs occasioned by MCWD's use of the outfall for brine disposal.

5. Priority Right for Use of Unused Outfall Capacity. During the term of this MOU, MCWD shall have the right prior to any other person, including any agency or entity, to use a portion of the capacity of the outfall, not used for discharge and disposal of treated sewage, for brine generated by up to a 25 MGD desalination plant.

6. Term. This MOU shall be effective upon execution and shall continue in effect thereafter for five years, unless sooner terminated or superseded by further agreement of MRWPCA and MCWD.

7. No Commitment to Use. This MOU is not intended to and shall not be interpreted to make an irreversible commitment of resources for any activities mentioned in this MOU that may result in changes to the physical environment and that are not described and analyzed in a document that complies with the requirements of the California Environmental Quality Act. The parties specifically intend to avoid any commitments and actions that would, in light of all surrounding circumstances, commit MRWPCA and MCWD as a practical matter to use the outfall for brine discharge before completion of environmental analysis pursuant to the California Environmental Quality Act.

8. General Provisions.

8.1 Remedies. By reason of the specialized nature of the outfall capacity, and for the further reason that the extent of any damage caused to either party by the other by reason of any breach of this MOU or agreement may be extremely difficult to determine, it is agreed by the parties hereto that an action for damages is an inadequate remedy for any breach, and that specific performance, without precluding any other remedy available in equity or law, will be necessary to furnish either party hereto with an adequate remedy for the breach thereof.

8.2 No Third Party Beneficiaries. This MOU is not for the benefit of any person, corporation or other entity, other than the parties hereto, and no person, corporation or other entity except the parties hereto, shall have any rights or interest in or under this MOU unless otherwise specifically provided herein.

8.3 MOU Modification. This MOU may be amended or modified only by mutual written agreement of the parties.

8.4 Notices. All notices or other writings in this MOU provided to be given or made or sent, or which may be given or made or sent, by one party hereto to another, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, registered, certified or first class, postage prepaid, and addressed as follows:

To MRWPCA:

General Manager  
Monterey Regional Water Pollution Control Agency  
5 Harris Court, Building D  
Monterey, Ca 93940

To DISTRICT:

General Manager  
Marina Coast Water District  
11 Reservation Road  
Marina, CA 93933

The address to which any notice or other writing may be given or made or sent to any party may be changed upon written notice given by such party as provided above.

8.5 Severability. If any one or more of the terms or conditions set forth in this MOU to be performed on the part of MRWPCA or the District, or either of them, should be contrary to any provisions of law or contrary to the policy of law to such an extent as to be unenforceable in any court of competent jurisdiction, then such terms or conditions, shall be null and void and shall be deemed severable from the remaining terms or conditions and shall not affect the validity of the remaining provisions of this MOU.

8.6 Section Headings. Section headings in this MOU are for convenience only and are not to be construed as a part of this MOU or in any way limiting or amplifying the provisions hereof.

8.7 Waiver. None of these terms or conditions herein contained can be waived except by mutual written consent.

8.8 Use of Information. Both Parties shall have access to and any party may use and have copies of any information and writings associated with performance of this MOU, including but not limited to working papers, plans, specifications, designs, and environmental data and documents, developed by or for either party relating to the Connection. One copy of such information shall be provided to the requesting party at no cost. Agreements entered into by either Party for the performance of this MOU will include a requirement that a copy of all such information and writings be made available to the Party at the Party's office for use by both Parties.

8.9 Interpretation. This MOU has been negotiated by and between persons knowledgeable in the subject matter of this MOU and each party has had the opportunity to have this agreement and all exhibits to it reviewed by legal counsel. Accordingly, any rule of law (including Civ. Code § 1654) or legal decision that would require interpretation of any ambiguities in this MOU against the party that has drafted it is not applicable and is waived. The provisions of this MOU and the exhibits to this MOU shall be interpreted in a reasonable manner to effect the purpose of the parties and this MOU.

8.10 Counterparts. This MOU may be executed in counterparts, and each fully executed counterpart shall be deemed an original document, constituting one agreement, binding on and benefiting the parties and their successors and assigns.

8.11 Compliance With Law. This MOU and the performance of each term of this agreement are subject to compliance with applicable laws, ordinances, rules, regulations and orders.

8.12 Further Actions. The parties agree to execute such other documents and take such actions as may be necessary to give effect to the provisions of this agreement.

8.13 Approval; Cooperation. Whenever consent or approval or cooperation of a party is required to give effect to any of the provisions of this MOU, that party shall not unreasonably withhold such consent or approval or cooperation.

8.14 Effect; Amendment. This MOU constitutes the full and complete agreement of the parties regarding its subject matter, and any prior agreements or arrangements are hereby superseded. This MOU may be amended or modified only by a writing signed by the parties.

8.15 Severability. If any of the provisions of this MOU are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this MOU and shall not cause the invalidity or unenforceability of the remainder of this MOU, unless this MOU without the severed provision would frustrate a material purpose of any party in entering into this MOU.

8.16 Duty to Meet and Confer. If any dispute under this MOU arises, the Parties shall first meet and confer, in an attempt to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other party all the information that the Party has in its possession that is relevant to the dispute, so that both Parties will have ample information with which to reach a decision.

8.17 Disputes. The Parties must submit any disputes arising under this MOU to non-binding mediation before filing suit to enforce or interpret this MOU. Upon request by either Party, the Parties will within ten days select a single mediator to mediate the dispute within fifteen days of such selection. If the Parties cannot agree on a mediator within ten days, either Party may ask the then presiding Judge of the Monterey County Superior Court to select a mediator to mediate the dispute within fifteen days of such selection. If the dispute is not resolved within forty-five days of such selection, either Party may file suit to specifically enforce or interpret this MOU and to seek any damages to which the Party may be entitled.

8.18 Notices. All communications under this MOU shall be deemed completed by one Party when delivered personally to the principal office of the other Party; when faxed to the other Party, to the fax number provided by the receiving Party; or five days after the document is placed in the United States mail, first class, registered mail, or certified mail, postage prepaid, addressed to the other Party as follows:

To DISTRICT:                      General Manager  
   11 Reservation Road  
   Marina, CA 93933-2099  
   Phone No.: (831) 384-6131  
   Fax No.: (831) 384-2479

To MRWPCA:                        General Manager  
   5 Harris Court, Building D  
   Monterey, CA 93940  
   Phone No.: (831) 372-3367  
   Fax No.: (831) 372-6178

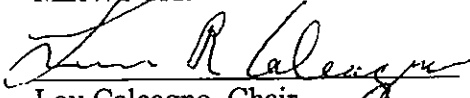
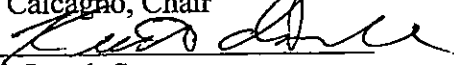
The address or fax number to which any notice or other writing may be given or made or sent may be changed upon written notice to all parties.

8.19 Administrators. MRWPCA and MCWD hereby designate their respective General Managers as their Administrators for this MOU. All matters concerning this MOU shall be

submitted to the MOU Administrators or such other representatives as the MOU Administrators may designate for their respective agencies. Either party may, in its sole discretion, change its designation of the MOU Administrator and shall promptly give written notice to the other party of any such change.


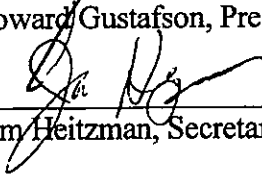
WHEREFORE, the parties have caused this MOU to be executed by persons authorized to execute the MOU on behalf of the parties, effective on the date of the last signature.

**MRWPCA:**

  
Lou Calcagno, Chair  
  
Keith Israel, Secretary

Date: \_\_\_\_\_

**DISTRICT:**

  
Howard Gustafson, President  
  
Jim Heitzman, Secretary


Date: 4-15-09

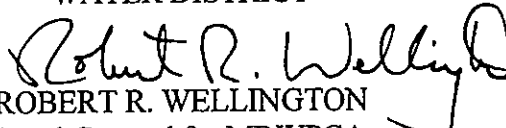
**APPROVED AS TO FORM:**

Dated: April 14, 2009

Dated: 4/15, 2009

NOLAND, HAMERLY, ETIENNE & HOSS  
A Professional Corporation

By   
Lloyd W. Lowrey, Jr.  
Legal Counsel for MARINA COAST  
WATER DISTRICT

  
ROBERT R. WELLINGTON  
Legal Counsel for MRWPCA