

**MONTEREY COUNTY BOARD OF SUPERVISORS OF THE  
MONTEREY COUNTY WATER RESOURCES AGENCY**

**MEETING:** June 16, 2009 Time: 1:30 P.M.

**AGENDA NO.:**

**SUBJECT:** Approve the Cooperative Planning and Joint Analysis for a Monterey Regional Water Supply Program Memorandum of Understanding (MOU)

**DEPARTMENT:** Water Resources Agency

**RECOMMENDATION:**

It is recommended that the Monterey County Water Resources Agency Board of Supervisors approve the Cooperative Planning and Joint Analysis for a Monterey Regional Water Supply Program Memorandum of Understanding (MOU).

**SUMMARY/DISCUSSION:**

The California American Water Company (CalAm) has proposed the Coastal Water Project (CWP), which would produce desalinated water, convey it to the existing CalAm distribution system and increase the system's use of storage capacity in the Seaside Groundwater Basin. On January 30, 2009, the California Public Utilities Commission issued a Draft Environmental Impact Report (DEIR) for the CWP. The Monterey County Water Resources Agency (Agency) comment letter was approved by the Board of Directors in March 2009, the focus of which was to protect groundwater resources and clarify existing issues of surface water development for the Salinas River. It has been the stated objective of the Board of Directors to participate in a lead role for any project that contemplates the use of Salinas Valley water resources and hence, the Board of Supervisors should consider approving this MOU.

The DEIR analyzes at an equal level of detail three water supply projects that can each satisfy the objectives of the CWP: the Moss Landing Project, the North Marina Project and the Regional Project. The Regional Project would integrate the development and allocation of several water supply sources, including desalination, to address existing and projected future demands within the CalAm service area, as well as existing and future demands in other areas of North Monterey County. The Regional Project could utilize the existing Salinas River Diversion Facility and would include a new surface water treatment plant. Instead of employing slant wells for desalination source water as would the North Marina Project, the Regional Project would employ vertical wells to draw water from beneath the inland side of the beach dunes, and would add capacity to store additional water in the Seaside Groundwater Basin. As proposed in the Regional Project alternative, the Marina Coast Water District (MCWD) would be the owner of the regional desalination facility and the surface water treatment plant.

The Agency is contemplating the execution of several documents relating to a proposed planning process for regional water supply. The proposed planning process requires a collaborative technical evaluation of several elements presently under consideration in the Regional Project alternative proposed by CalAm. The memorandum of understanding (MOU) between the Agency, MCWD and the Monterey Regional Water Pollution Control Agency (MRWPCA), <sup>the</sup> proposes to establish a framework for further planning to meet long-term urban water supply needs through a proposed North Marina Brackish Desalination Plant, and other regional project

elements, for the Monterey Peninsula and the communities of North Monterey County, other areas of Monterey County including agriculture, the former Fort Ord and the United States Army. The MOU makes clear that it is not intended to and shall not be interpreted to constitute, directly or indirectly, a commitment by the Agency, MCWD or MPWPCA to undertake or approve any project or action, including but not limited to a project or action. The MOU is intended to be a preliminary agreement for planning-level activities relating to the Regional Project. This Agreement is not intended to and shall not be interpreted to constitute, directly or indirectly, a commitment by the Parties to undertake any project or action, including but not limited to a project or action involving any element of the Regional Project. The Parties acknowledge and agree that no commitment to undertake any project or action may occur until environmental review has been completed in accordance with CEQA. The Parties specifically intend to avoid any commitments or actions that would, in light of all surrounding circumstances, commit the Parties as a practical matter to any project or project element prior to the completion of environmental analysis in accordance with CEQA.

The brackish water supply component element of the MOU will provide an initial mechanism for cooperation between the agencies to evaluate a source of brackish source water for the desalination. The MOU makes clear that it is not intended to and shall not be interpreted to constitute, directly or indirectly, a commitment by MCWRA or MCWD to undertake any project or action, including but not limited to a project or action involving the use of brackish source water for the desalination element of the Regional Project. MCWRA and MCWD acknowledge and agree that no commitment to undertake any project or action may occur until environmental review has been completed in accordance with CEQA.

By letter dated April 25, 2009, the Ag Land Trust (Trust) expressed its opposition to the proposed MOU. The Trust asserts, among other things, that (1) the Salinas Valley Groundwater Basin (Basin) has been in overdraft for over 60 years; (2) MCWRA has no overlying or other rights to groundwater that it may use to give to CalAm for export out of the Basin; and (3) implementation of the Regional Project would infringe on prior rights of overlying landowners. Similar objections were filed by the Pajaro/Sunny Mesa Community Services District and the Monterey County Agricultural and Historical Land Conservancy.

MCWRA is organized and existing under the Monterey County Water Resources Agency Act, Water Code Appendix Chapter 52 ("Agency Act"), and its territory consists of "all of the territory of the county lying within the exterior boundaries of the county." (Agency Act Section 52-4). The Agency Act provides in relevant part:

The Legislature finds and determines that the agency is developing a project which will establish a substantial balance between extractions and recharge within the Salinas River Groundwater Basin. For the purpose of preserving that balance, no groundwater from that basin may be exported for any use outside the basin, except that use of water from the basin on any part of Fort Ord shall not be deemed such an export. If any export of water from the basin is attempted, the agency may obtain from the superior court, and the court shall grant, injunctive relief prohibiting that exportation of groundwater." (Agency Act § 52-21; emphasis added)

MCWRA also has broad powers to plan, design and implement water supply projects within its territory, including the power to "[a]ppropriate and acquire water and water rights, and import

water into the agency and conserve within or outside the agency, water for any purpose useful to the agency." (Agency Act Section 52-9(d)(3)).

In addition to MCWRA's statutory powers under the Agency Act, the County of Monterey has broad authority to regulate groundwater resources within the County pursuant to its police powers. (*Baldwin v. County of Tehama* (3rd Dist.1994) 31 Cal. App. 4th 166, 173, 178). MCWRA believes that the brackish water that would be extracted from the proposed vertical intake wells and thereafter desalinated would be deemed "developed water" under California law, and that the use of such water outside the Basin would not violate the Agency Act's restrictions against export of groundwater from the Basin. Without desalination of the brackish water it would be unusable by overlying landowners or other water users. Moreover, hydrologic modeling analyses undertaken to date indicate that extraction of brackish water at the coast will cause no injury to the rights of overlying landowners or other water users. (Physical impacts associated with the Regional Project, including but not limited to the proposed intake wells, will be fully analyzed in accordance with the California Environmental Quality Act.) Under established legal principles, the rights of the project proponents to extract brackish water from the Basin, desalinate and use such water would be fully protected based on prevailing policies encouraging the use of technological advances such as desalination to augment native water supplies.

Technical analyses conducted to date demonstrate the character of the water contained in the aquifer at the proposed extraction site is consistent with seawater. Both the concentration of dissolved salts (approximately 35,000 mg/l) and the distribution of those salts (cations and anions) are essentially equal to seawater. Additional technical evaluation, model and monitoring will be required to confirm current test results. In addition, the Agency will need to develop an extensive groundwater monitoring program. Modeling results from initial analysis demonstrates the pumping will induce groundwater movement towards the ocean. This concept, pumping along the ocean, was one of several concepts initially discussed for managing the Salinas Valley groundwater basin during the initial basin management program discussions, and is currently employed by Alameda County Water District as part of its groundwater management programs.

In regard to North Monterey County, a North County Regional Ad-Hoc Committee (NCRAH), comprised of private citizens and public agencies, has been working together since September 2008 on a comprehensive solution to water issues in North Monterey County. The group has been evaluating a suite of conceptual solutions to water issues. The evaluation is based on priorities and alternatives brought forth by committee members, that were then filtered based upon committee member input, to a set of concepts that will then move through a feasibility analysis in the near future. The committee hopes to provide a report describing the process and the comprehensive solution concepts by September 2009.

It is staff's recommendation to have the Agency participate in the proposed MOU. The Agency has been committed for more than 50 years to develop projects that do not injury groundwater pumping, find and develop solutions and establish equitable funding mechanisms for water supply in Monterey County. Further, it is the recommendation that Agency staff participates in an overview capacity and review the work as it is developed. Thus our initial support will be in the form of in-kind services.

**OTHER AGENCY INVOLVEMENT:**

On March 23, 2009 a meeting of the Monterey Regional Water Pollution Control Agency was held with representatives of Marina Coast Water District and the Monterey County Water Resources Agency to affirm support for a Regional Project and its elements in order to begin development of institutional arrangements between member organizations. Additionally, the Monterey County Water Resources Agency Board of Directors approved this MOU at their meeting on April 27, 2009.

Prepared and Approved by:

Curtis V. Weeks  
General Manager

Date:

Attachment: Cooperative Planning and Joint Analysis for a Monterey Regional Water Supply Program Memorandum of Understanding

cc:

**MEMORANDUM OF UNDERSTANDING  
REGARDING  
COOPERATIVE PLANNING AND JOINT ANALYSIS  
FOR A  
MONTEREY REGIONAL WATER SUPPLY PROGRAM**

This Memorandum of Understanding ("MOU") is made and entered into as of \_\_\_\_\_, 2009, by and between the Monterey Regional Water Pollution Control Agency ("MRWPCA"), Marina Coast Water District ("MCWD"), and Monterey County Water Resources Agency ("MCWRA") (collectively, the "Parties").

**RECITALS**

WHEREAS, MCWRA is the lead agency and MRWPCA and MCWD are responsible agencies for adopting this planning MOU; and

WHEREAS, the California Public Utilities Commission ("CPUC") is presently considering a proposal from California American Water Company to construct the Coastal Water Project ("CWP"), and a Draft Environmental Impact Report ("DEIR") has been prepared for that project and is now under consideration by the CPUC for preparation and certification of a Final Environmental Impact Report ("FEIR"); and,

WHEREAS, the CPUC is currently conducting two parallel proceedings for water supply in Monterey County, an environmental impact report process and a rate proceeding (CPUC proceeding number A.04-09-019 ("Proceeding")), and the Parties believe that the establishment of a planning framework in accordance with this MOU will facilitate the resolution of issues now pending before the CPUC; and

WHEREAS, the Monterey Regional Water Supply Project ("**Regional Project**") has been identified in the DEIR as an alternative to the CWP, with components that may benefit cities on the Monterey Peninsula, the communities of North Monterey County; agricultural interests in North Monterey County, and the United States Army; and

WHEREAS, the Parties believe that the Regional Project has potential for the most benefit, least cost and least environmental impact of the alternatives being considered in the DEIR; and

WHEREAS, the DEIR states that the Regional Project has the support of staff at the CPUC; and

WHEREAS, the Parties support a collaborative institutional and political approach to facilitating analysis of the environmental, technical, managerial and financial feasibility of the Regional Project to foster and promote cost-effective, regionally beneficial and environmentally sensitive regional water supply planning; and

WHEREAS, the Parties recognize that water supply issues confronting north Monterey County and the Monterey Peninsula are significant, and require focused technical and cooperative political effort to resolve; and,

WHEREAS, the Parties further recognize that there is an urgency to identify and adequately analyze and plan, fully in accordance with all applicable laws, a water supply solution for North Monterey County, the MCWD service area and the Monterey Peninsula; and,

WHEREAS, the Parties have, the ability to furnish financial resources and in-kind assistance in support of the cooperative planning and joint analysis contemplated by this MOU ; and,

WHEREAS, the Parties wish by this MOU to provide a common planning framework to conduct planning-level analysis for the Regional Project and elements of the Regional Project, excepting surface water diversion and/or groundwater for use outside MCWRA Zone 2C, as to which the Parties have not yet analyzed and come to a common position; and

WHEREAS, nothing in this MOU is intended to infringe upon or otherwise restrict the independent authority of each Party; and,

WHEREAS, this MOU is intended as a preliminary agreement for planning-level activities relating to the Regional Project. This Agreement is not intended to and shall not be interpreted to constitute, directly or indirectly, a commitment by the Parties to undertake any project or action, including but not limited to a project or action involving any element of the Regional Project. The Parties acknowledge and agree that no commitment to undertake any project or action may occur until environmental review has been completed in accordance with CEQA. The Parties specifically intend to avoid any commitments or actions that would, in light of all surrounding circumstances, commit the Parties as a practical matter to any project or project element prior to the completion of environmental analysis in accordance with CEQA.

NOW, THEREFORE, in consideration of the mutual agreements made herein, and the mutual benefits to be provided, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Parties will negotiate in good faith agreements to analyze the feasibility of a) brackish water supply wells for a potential desalination plant; b) ocean outfall brine disposal; and, c) urban reuse of recycled water so that the FEIR can be used for future decisions by the Parties. The Parties' respective governing bodies will consider adoption of these agreements within thirty (30) days after the Effective Date.

2. If the CPUC certifies an FEIR for the Regional Project and approves a project based on the certified FEIR, the Parties will cooperate and use the certified FEIR as the basis for analyzing and acting on the implementation of a regional water supply project in compliance with all applicable laws.

3. The Parties shall further negotiate a cost sharing agreement for the equitable sharing of expenses for technical support and provision of in-kind assistance necessary to implement this MOU, the approval of such agreement to be a condition precedent to further performance pursuant to their MOU. Such negotiations shall commence immediately upon the Effective Date and either successfully conclude or terminate within sixty ( 60) days after the Effective Date.

4. The Parties support the negotiation and execution of an agreement between MRWPCA and MCWD to implement the project described in the environmental impact report certified by MCWD on October 27, 2004, by Resolution 2004-56 ("RUWAP EIR") for the Regional Urban Water Augmentation Project in accordance with CEQA, and Addendum No. 1 to the RUWAP EIR certified on November 15, 2006, and Addendum No. 2 certified on February 14, 2007.

5. The Effective date shall be the date this MOU is last executed by any of the Parties.

Dated: \_\_\_\_\_, 2009                      Monterey County Water Resources Agency  
by \_\_\_\_\_  
[Name and title]

Dated: \_\_\_\_\_, 2009                      ~~Name and title~~ ←  
Marina Coast Water District  
by \_\_\_\_\_  
[Name and title]

Dated: \_\_\_\_\_, 2009                      Monterey Regional Water Pollution Control  
Agency  
by \_\_\_\_\_  
[Name and title]

APPROVED AS TO FORM AND CONTENT

CHARLES J. MCKEE, General Counsel, Monterey County Water Resources Agency

By \_\_\_\_\_  
Irv Grant, Deputy General Counsel