

Resolution No. 2010-18
Resolution of the Board of Directors
Marina Coast Water District
Approving the Acquisition of 224-acres (+/-) of Armstrong Ranch Land
And Appurtenant Easements

March 16, 2010

RESOLVED by the Board of Directors (“Directors”) of the Marina Coast Water District (“the District”), at a regular meeting duly called and held on March 16, 2010, at the business office of the District, 11 Reservation Road, Marina, California as follows:

WHEREAS, the Directors find as follows:

AUTHORITY

WHEREAS, 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; and,

PURPOSE

WHEREAS, the District desires to own property in the area north of the City of Marina and south of land owned by the Monterey Regional Water Pollution Control Agency (“MRWPCA”) and the Monterey Regional Waste Management District (“MRWMD”) to provide land for future construction, operation and maintenance of water supply infrastructure to produce, treat, store, and distribute water; and,

BACKGROUND ON ACQUISITION

WHEREAS, in March 1996, the District, Monterey County Water Resources Agency (“MCWRA”), the City of Marina (Marina), J.G. Armstrong Family Members (“Armstrong Family”) and RMC Lonestar, the owners of certain Marina area lands, signed the Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands (“1996 Agreement”) to help reduce seawater intrusion and protect the groundwater resource and preserve the environment of the Salinas River Groundwater Basin (“Basin”) through voluntary commitments by the signatories to limit, conserve and manage the use of groundwater from the basin and to provide the terms and conditions for the annexation of certain territory in the Marina area to the MCWRA’s benefit assessment Zones 2 and 2A as a financing mechanism providing additional revenues to the MCWRA to manage and protect the groundwater resources in the Basin and to reduce seawater intrusion; and,

WHEREAS, on July 23, 1996, the District and the Armstrong Family modified the 1996 Agreement with a Supplement; and,

WHEREAS, in the 1996 Agreement, the District, the MCWRA, the City of Marina, the Armstrong Family, and RMC Lonestar agreed on terms and conditions to annex certain Marina Area lands, including the Site, into assessment Zones 2 and 2A, and spelled out terms for future annexation of the property to the District and Marina and reservation of a portion of lands owned by the Armstrong Family and designated “the Armstrong Ranch” for the District’s possible future acquisition for water supply facilities; and,

WHEREAS, the portion of the Armstrong Ranch reserved for the District constitutes 224 (+/-) acres of the Armstrong Ranch property identified in the 1996 Agreement (northeast portion), located north of the City of Marina in Monterey County, together with certain easements (refer to Figure 3-2, Attachment B) (collectively, the “Site”) and the Site fits the definition of the purpose statement above and is consistent with the 1996 Agreement; and,

WHEREAS, in June 2003, the 1996 Agreement was amended to extend the District’s deadline to obtain the Site to June 30, 2010 ; therefore, with the deadline imminent, the District’s action on exercising its right to purchase the property is timely and urgent; and,

WHEREAS, the Site is located within the City of Marina’s Sphere of Influence, outside the City’s Urban Growth Boundary and, in the October 2000 City of Marina General Plan, the Land Use Map designates the Site for Public Facilities with the title “Regional Reservoir Reserve,” and the District is described as the sole water purveyor for the City; and,

WHEREAS, in 2000, an Environmental Impact Report (“EIR”) was prepared and certified by the City of Marina to address the environmental effects, mitigation measures, and project alternatives associated with the City of Marina General Plan, which designates development of public facilities at the Site; and,

WHEREAS, the District’s 2005 Urban Water Management Plan (pages 2-21 through 2-26) identifies the need for an augmentation of existing groundwater supplies through either recycled or desalinated water in accordance with the District’s approved Regional Urban Water Augmentation Project (“RUWAP”) that is defined below; and,

WHEREAS, on March 21, 2007, the District recorded a grant of easement from the owners of Armstrong Ranch land for construction, operation and maintenance of one or more underground water pipelines and appurtenances, appurtenant to and transferable with the District’s water and wastewater collection, supply and distribution systems; and,

WHEREAS, the District’s existing Capital Improvement Program (2009/2010) includes the RUWAP as project numbers RW-0155 and RW-0156, and Desalination as GW-0157, respectively, demonstrating the District’s existing programming for potential projects at the Site; and,

ACTION

WHEREAS, this Resolution would enable the General Manager and Secretary and the President to take the actions and execute the documents necessary or appropriate to exercise the District’s right to acquire and accept the Site in accordance with the 1996 Agreement as supplemented and amended and this Resolution (the “Acquisition”); and,

CEQA COMPLIANCE

LAND ACQUISITION

WHEREAS, CEQA Guidelines Sections 15004 (b)(2)(A) provides that “agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency’s future use of the site on CEQA compliance,” and the California Supreme Court’s decision in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, at 134, states that the Guidelines’ exception for land purchases is a reasonable interpretation of CEQA; and,

WHEREAS, this Resolution conditions the District’s future use of the Site on CEQA compliance; and,

WHEREAS, in accordance with CEQA Guidelines Section 15050(b) and 15096, the District has reviewed, considered, and relies upon the information in two existing, certified EIRs, the California Public Utilities Commission (“CPUC”) EIR and the RUWAP EIR as discussed in the CPUC EIR as hereinafter described, and related entitlements and approvals, to (1) thoroughly disclose and consider all relevant publicly available information on potential future activities that could occur at the Site and that may be indirectly enabled by the Acquisition, and (2) comprehensively identify all indirect environmental impacts of the Acquisition, thereby, evaluating the “whole of the action” and avoiding piece-mealing or segmenting the analysis; and,

RUWAP EIR AND ENTITLEMENTS

WHEREAS, the *Final Environmental Impact Report for the Marina Coast Water District Regional Urban Water Augmentation Project* (“RUWAP EIR”) (State Clearinghouse #2003081142) was prepared pursuant to CEQA to address the environmental effects, mitigation measures, and project alternatives associated with the consideration of the Regional Urban Water Augmentation Project (“RUWAP”) and actions related thereto; and,

WHEREAS, the Directors, by Resolution No. 2004-56, certified the RUWAP EIR as complete and adequate and fully in compliance with all requirements of CEQA on October 27, 2004; and,

WHEREAS, the process of preparing the RUWAP EIR offered numerous opportunities for public involvement and was designed to maximize agency and public input for the RUWAP environmental review process and the details of that process are included in the RUWAP EIR and Addendum No. 1 to the RUWAP EIR as hereinafter described; and,

WHEREAS, the RUWAP EIR underscored that the District’s primary project objective of the RUWAP to provide 2,400 acre-feet per year (AFY) of new water supply to augment the existing groundwater supply for the Ord Community in accordance with the Fort Ord Reuse Authority (“FORA”) *Fort Ord Reuse Plan and Elements* (June, 1997) (“*Base Reuse Plan*”), its accompanying certified Final Environmental Impact Report (“EIR”) and the Facilities Agreement between the District and FORA; and,

WHEREAS, the RUWAP EIR evaluated two primary water supply augmentation alternatives that would provide 3,000 acre-feet year (AFY) of new water supply: (1) a seawater desalination alternative with no facilities proposed on the Site, and (2) a recycled water project alternative, with potential facilities at the Site, including a recycled water surface storage reservoir, pump stations, pipelines, water treatment, and appurtenant facilities; and,

WHEREAS, the RUWAP EIR also included a hybrid of the two primary water supply alternatives (a combination of 1,500 AFY seawater desalination project and a 1,500 AFY recycled water project); and,

WHEREAS, in June 2005, the District and FORA approved the RUWAP alternative consisting of a total augmentation supply of 3,000 AFY (including 300 AFY to be delivered outside existing areas served by the District), to be supplied by a combination of seawater desalination project and a recycled water project, that included a pipeline located on the Armstrong Ranch, made CEQA findings, and authorized filing a Notice of Determination on the approval; and,

WHEREAS, on October 25, 2006, the District adopted Addendum No. 1 to the RUWAP EIR and on November 15, 2006, the District approved changes to the recycled water component of the RUWAP; and,

WHEREAS, on February 14, 2007, the District adopted Addendum No. 2 to the RUWAP EIR and approved additional changes to the recycled water component of the RUWAP; and,

WHEREAS, a pipeline along the western boundary of the Site received a Use Permit from the County of Monterey in January 2010, the approval of which relied upon the RUWAP EIR; and,

CPUC EIR AND ENTITLEMENTS

WHEREAS, the CPUC prepared and certified an EIR, which was certified on December 17, 2009 (SCH#2006101004) (hereafter, "CPUC EIR") to address the environmental effects, mitigation measures, and project alternatives associated with the consideration of California-American Water Company ("CAW") Coastal Water Project, including the following key alternatives that were each addressed at the same level of detail (specifically, project-level): the Proposed Project (also called the Moss Landing Alternative), a CAW North Marina Alternative, and a two-phased Monterey Regional Water Supply Alternative (called the Monterey Regional Water Supply Program, or "MRWSP") that are hereafter referred to collectively as the "Coastal Water Project Alternatives"; and,

WHEREAS, the CPUC EIR, particularly in Chapter 5, refers to and discusses the RUWAP EIR and recycled water elements of the RUWAP; and,

WHEREAS, the process of preparing the CPUC EIR offered numerous opportunities for public involvement and was designed to maximize agency and public input for the Coastal Water Project environmental review process, and the details of that process are included in the CPUC's Decision to certify the EIR that is incorporated in its entirety into this Resolution by reference and is available for review at: http://docs.cpuc.ca.gov/published/final_decision/111407.htm; and,

WHEREAS, the full text of the CPUC EIR is incorporated in its entirety into this Resolution by reference and is available for review at <http://www.cwp-eir.com/index.html> (the Executive Summary (Pages ES-1 through ES-54) from said document is included as Attachment A to this Resolution); and,

WHEREAS, the CPUC EIR contains complete descriptions of the CAW Coastal Water Project Alternatives, the background of the CAW Coastal Water Project Alternatives process and development, the impacts and mitigation measures of the Coastal Water Project Alternatives, and other CEQA requirements and procedural information; and,

WHEREAS, the CPUC EIR reflects that the Moss Landing Alternative would not include any components on the Site; and,

WHEREAS, the CPUC EIR reflects that the North Marina Alternative would include the following components on the Site:

- portions of source water pipelines leading to the desalination plant,
- a desalination plant and appurtenance facilities to be located on 10 acres of the Site,
- portions of a return flow pipe to deliver concentrated brine byproduct to the MRWPCA's regional treatment plant site immediately north of the Site to enable discharge of the brine via the MRWPCA's existing wastewater ocean outfall structure,
- electricity transmission facilities to connect to the existing PG&E grid,¹ and
- portions of the product water distribution system, including pipelines, pump stations, storage, and appurtenances; and,

WHEREAS, the CPUC EIR reflects that Phase I of the MRWSP Alternative would include the following components on the Site:

- portions of source water pipelines leading to the desalination plant,
- a desalination plant and appurtenance facilities,
- portions of a return flow pipe to deliver concentrated brine byproduct to the MRWPCA's regional treatment plant site immediately north of the Site to enable discharge of the brine via the MRWPCA's existing wastewater ocean outfall structure,
- electricity transmission facilities to connect to the existing PG&E grid,² and,
- Portions of the product water distribution system, including pipelines, pump stations, storage, and appurtenances, and,

¹ The CPUC EIR also describes one or more alternatives to use of PG&E electricity for power supply for the desalination plant component of the North Marina Alternative, including biomass generators, gas-fired turbine generators, reciprocating engine generators, wind turbines, and solar. The impacts of these power supplies were not evaluated in the CPUC EIR but were assumed to have fewer or less severe environmental impacts than those due to use of existing PG&E electricity grid.

² The CPUC EIR also describes one or more alternatives to use of PG&E electricity for power supply for the desalination plant component of the Phase I MRWSP, including biomass generators, gas-fired turbine generators, reciprocating engine generators, wind turbines, and solar. The impacts of these power supplies were not evaluated in the CPUC EIR but were assumed to have fewer or less severe environmental impacts than those due to use of existing PG&E electricity grid.

- recycled water distribution elements of the District's RUWAP³; and,

WHEREAS, the CPUC EIR identified that Phase II of the MRWSP would potentially include the following components on the Site:

- underground (A-Aquifer) storage of recycled water,
- a surface water treatment plant,
- additional power supply options, including one or more of the following: biomass, gas-fired turbine generators, reciprocating engine generators, wind turbines, and solar, and
- pipelines and/or other appurtenant structures; and,

WHEREAS, the Site is within the study area shown on Figure 3-20a, Revised Figure 5-3, Revised Figure 5-4, and Figure 5-5 of the CPUC EIR, and the study area is designated as "MCWD Property at Armstrong Ranch" in Figures 5-3 and 5-5, and specification of the number of acres to be acquired within the study area does not in any way change the analysis made in the CPUC EIR; and,

WHEREAS, the CPUC EIR identified significant impacts of the CAW Coastal Water Project alternatives and provided mitigation to reduce most of the significant impacts to a less-than-significant level with several environmental impacts remaining significant with mitigation, as summarized in the Executive Summary in Attachment A to this resolution; and,

WHEREAS, pursuant to CEQA Guidelines Sections 15096, 15162, 15164 and 15063 and in consultation with other affected agencies and entities, the District, as a responsible agency for approval of the Coastal Water Project alternatives, has prepared an Addendum to the CPUC EIR supported by an Initial Study (the Armstrong Ranch Property Acquisition Addendum in Attachment B) and finds the following related to the required CEQA compliance for the Acquisition:

- Acquisition of the Site, in and of itself, is merely a property transfer that would not directly have any significant effects on the environment,
- Future potential projects with components proposed to be located at the Site were described and evaluated previously in certified EIRs and those projects would result in significant environmental effects, including significant but potentially mitigable impacts,
- Although the decision to acquire the Site is not approval of a project under CEQA, the District is choosing to act as a responsible agency and to use a previously prepared and certified EIR, specifically the CPUC EIR, to support acquisition of the Site; and,

WHEREAS, the action under consideration is approval of the Acquisition of the Site, which approval constitutes one of many actions necessary to implement the Coastal Water Project alternatives and would not by itself result in any significant impacts as described in the Armstrong Ranch Property Acquisition Addendum (Attachment B to this resolution); and,

³ As described in the CPUC EIR on page 5-9, the elements of the RUWAP Recycled Water Project on the site may be constructed and operated pursuant to existing approvals by MCWD and Monterey County whether or not the MRWSP Alternative or its components are approved.

WHEREAS, the Directors have reviewed and considered the CPUC EIR and the Armstrong Ranch Property Acquisition Addendum (Attachment B) in their entirety and find that the CPUC EIR and the Armstrong Ranch Property Acquisition Addendum are adequate for the purpose of approving the District's Acquisition of the Site, and the District hereby relies upon the contents of those documents and the CEQA process for its CEQA compliance; and,

WHEREAS, the District intends to conduct all future activities at the Site in accordance with the CPUC EIR and with the RUWAP EIR as amended as discussed in the CPUC EIR; or, alternatively, and if needed to comply with CEQA, the District would amend, supplement or otherwise conduct new environmental review subsequent to approval of a project and adoption of findings by the CPUC and prior to directly or indirectly committing to undertake any specific project or action involving a physical change to the environment related to the Acquisition of the Site, including but not limited to a project or action involving any element of Phase I of the MRWSP Alternative or the North Marina Alternative; and,

WHEREAS, the District's General Manager, as the District's designated negotiator, recommends that the Board approve the Acquisition for execution in the form presented to the Board in open session on March 16, 2010.

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

BE IT FURTHER RESOLVED, that the Board of Directors of the Marina Coast Water District 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,

BE IT FURTHER RESOLVED, that the Board of Directors of the Marina Coast Water District approve and adopt the Armstrong Ranch Property Acquisition Addendum to the CPUC EIR; and,

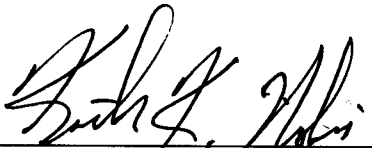
BE IF FURTHER RESOLVED, that the Board of Directors of the Marina Coast Water District hereby approve the Acquisition and authorize the General Manager and Secretary and the President to take the actions and execute the documents necessary or appropriate to exercise the District's right to acquire the Site in accordance with the 1996 Agreement, as supplemented and amended, and this Resolution, and to accept the Site; and,

BE IT FURTHER RESOLVED, that the General Manager is authorized and directed to prepare and file an appropriate Notice of Determination for approval of the Acquisition; and,


BE IT FURTHER RESOLVED, that the District's use of the Site after acquisition is conditioned upon CEQA compliance and that the District by determining to acquire and acquiring the Site does not foreclose analysis of any alternative or any mitigation measure in considering uses of the Site.

PASSED AND ADOPTED on March 16, 2010, by the Board of Directors of the Marina Coast Water District by the following roll call vote:

Ayes: Directors Burns, Gustafson, Lee, Nishi
Noes: Directors None
Absent: Directors Moore
Abstained: Directors None



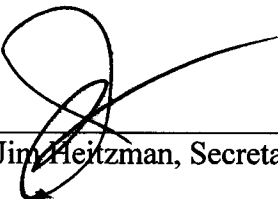
Kenneth K. Nishi, President

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. 2010-18 adopted March 16, 2010.



Jim Heitzman, Secretary