



## MARINA COAST WATER DISTRICT

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July 1, 2011

Re: Conflict of Interest Allegations Regarding the Monterey County Water Resources Agency (MCWRA)

The Board of Directors of the Marina Coast Water District (Marina Coast) is providing to the public the attached preliminary findings of an investigation into conflict of interest questions regarding MCWRA and its governing boards (the County).

Marina Coast is mindful that there are serious ongoing investigations being conducted by the District Attorney and the Fair Political Practices Commission (FPPC). Marina Coast has cooperated fully with those investigations. However, as a partner in the critically important Regional Desalination Project, and in view of the public concern and controversy surrounding these issues, and the need for transparency relating to the project, Marina Coast has decided to make the preliminary results of its own investigation available to the public.

The governing board of MCWRA is the County Board of Supervisors, which functions as the Board of Supervisors of the MCWRA when it conducts official business on behalf of the agency. There is also an MCWRA Board of Directors, members of which are appointed by the Board of Supervisors and/or other stakeholder constituencies, which serves in a largely advisory capacity and has no authority to enter into contracts that have not been budgeted by the Board of Supervisors. Stephen Collins, who recently resigned his position, has been a member of the MCWRA Board of Directors for many years. Mr. Collins has never been a member of the Board of Supervisors.

On June 21, 2011, the Board of Supervisors released to the public a document entitled "Summary of Preliminary Findings Regarding Director Stephen Collins' Business Relationship with RMC Water and Environment and Marina Coast Water District," apparently prepared by the law firm of Remcho, Johansen & Purcell (the Remcho Report). The Remcho Report was by its own terms preliminary and incomplete, and raised inaccurate and misleading inferences regarding Marina Coast's role.

As a result, Marina Coast engaged James L. Markman, an experienced and highly respected public agency law and water rights attorney from the Los Angeles law firm of Richards Watson Gershon, to investigate the relevant conduct and analyze its impact, if any, on the Regional Desalination Project.

Mr. Markman, a former California Deputy Attorney General with more than 30 years of experience in public agency and water law, is a recognized expert in conflict of interest issues arising under Government Code section 1090, the law that prohibits public officials from having a financial interest in their agencies' contracts. Mr. Markman has spoken and authored articles on section 1090 and has handled section 1090 litigation cases.

Despite the seriousness of the matters under investigation, we wish to note two particularly important and positive conclusions contained in Mr. Markman's preliminary findings: (1) neither General Manager Jim Heitzman nor any other official of Marina Coast violated Government Code section 1090 or any other provision of law prohibiting conflicts of interest, and (2) based on the facts uncovered during the investigation, any legal action to invalidate the Regional Desalination Project agreements entered into by MCWRA based on an alleged conflict of interest by an MCWRA official would lack merit and be time-barred.

We note further that Mr. Markman's preliminary report does not question the motives or desire of any person described in the report to act other than in what that person believed to be the public interest. Nor is the preliminary report intended to suggest that any person is guilty of conduct that should result in statutory or regulatory charges or penalties, a function reserved exclusively to law enforcement and regulatory agencies. Rather, the preliminary report is intended only to provide an accurate account of the information received in the investigation and an independent opinion of the legal effect of the actions taken on the agreements for the Regional Desalination Project.

While the investigations continue, Marina Coast reaffirms its commitment to the Regional Desalination Project. The project and project agreements have been approved in a final, non-appealable decision of the California Public Utilities Commission. The County gave its final approval to the agreements and the project in January 2011, after Mr. Collins' business relationship with RMC had ended. Finally, the time within which the project agreements can be challenged in a court of law has expired.

As the vast majority of stakeholders and the public have acknowledged, the Regional Desalination Project constitutes the best, most environmentally benign, and only feasible solution to the Peninsula's severe water supply problems that can meet the deadline of the State Water Resources Control Board's Cease and Desist Order. Moreover, there is strong evidence that project failure would expose the County to an economic, environmental and health and safety disaster of unprecedented proportions.

Under the circumstances, Marina Coast will take the following actions:

- Continue to cooperate with the ongoing investigations of the District Attorney and the FPPC, and task Mr. Markman to continue his investigation.
- Proceed with the Regional Desalination Project in accordance with Marina Coast's obligations under the WPA and Settlement Agreement.
- Work with its Regional Desalination Project partners to ensure that the project moves forward with expedition, and actively seek to resolve any issues that might arise from the inability or unwillingness of any of its partners to do the same.
- Instruct its General Manager to implement these actions, and to ensure the timely completion of the project.

Despite the seriousness of the issues under investigation, Marina Coast remains firmly committed to the Regional Desalination Project and intends to keep this vitally important project on track.



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William Y. Lee, President  
Marina Coast Water District Board of Directors