



MARINA COAST WATER DISTRICT

11 RESERVATION ROAD, MARINA, CA 93933-2099

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Agenda

Special Board Meeting, Board of Directors Marina Coast Water District

11 Reservation Road, Marina, California
Friday, September 28, 2012, 10:00 a.m.

This meeting has been noticed according to the Brown Act rules.

Mission: Providing high quality water, wastewater and recycled water services to the District's expanding communities through management, conservation and development of future resources at reasonable costs.

Vision: The Marina Coast Water District will be the leading public supplier of integrated water and wastewater services in the Monterey Bay Region.

1. Call to Order

2. Roll Call

3. Closed Session

- A. Pursuant to Government Code Section 54956.9(b)(1) and 54956.9(b)(3)(C)
Conference with Legal Counsel – Anticipated Litigation
Potential Litigation
Two Cases
 - 1) Claims of MCWRA and Monterey County against MCWD
 - 2) Claims of California–American Water Company against MCWD
- B. Pursuant to Government Code Section 54956.9 (c)
Conference with Legal Counsel – Anticipated Litigation
Potential Initiation of Litigation
One Case – MCWD Claims against Monterey County and MCWRA
- C. Pursuant to Government Code 54957.6
Conference with Labor Negotiator
Agency Negotiator (General Manager)
Employee Organization: Marina Coast Water District Employees Association
- D. Pursuant to Government Code 54957.6
Conference with Labor Negotiator
Agency Negotiator (General Manager)
Employee Organization: Teamsters Local 890

This agenda is subject to revision and may be amended prior to the scheduled meeting. A final agenda will be posted at the District office at 11 Reservation Road, Marina, 24 hours prior to the meeting. Copies will also be available at the Board meeting. A complete Board packet containing all enclosures and staff materials will be available for public review on Thursday, September 27, 2012 at the District office, Marina and Seaside City Halls, and at the Marina and Seaside Libraries. Information about items on this agenda or persons requesting disability related modifications and/or accommodations can contact the Board Clerk at: 831-883-5910. The next regular meeting of the Board of Directors is scheduled for October 9, 2012.

Reconvene Open Session

4. Possible Action on Closed Session Items *The Board will report out on any action taken during Closed Session, and may take additional action in Open Session, as appropriate. Any closed session items not completed will be discussed at the end of the meeting.*

- A. Consider Authorizing the District Counsel to Engage Special Litigation Counsel

5. Pledge of Allegiance

6. Oral Communications *Anyone wishing to address the Board on matters not appearing on the Agenda may do so at this time. Please limit your comment to three minutes. The public may comment on any other items listed on the agenda at the time they are considered by the Board.*

7. Action Item

- A. Consider Options for Action on the Ord Community Portion of the FY 2012-2013 District Budget

Action: The Board of Directors will consider taking action to approve the Ord Community Portion of the FY 2012-2013 District Budget.

8. Directors Comments

9. Adjournment *Set or Announce Next Meeting(s), date(s), time(s), and location(s):*

*Regular Meeting: Tuesday, October 9, 2012, 6:45 p.m.,
11 Reservation Road, Marina*

Marina Coast Water District
Agenda Transmittal

Agenda Item: 7-A

Meeting Date: September 28, 2012

Prepared By: Kelly Cadiente
Reviewed By: Carl Niizawa

Presented By: Kelly Cadiente

Agenda Title: Consider Options for Action on the Ord Community Portion of the FY 2012-2013 District Budget

Detailed Description: The Board is requested to consider options for action on the FY 2012-2013 Ord Community Proposed Budget in light of what transpired at the Fort Ord Reuse Authority (FORA) Board's September regular meeting.

The District submitted the initial Draft FY 2012-2013 Ord Community Compensation Plan (Plan) to FORA at its Water, Wastewater Oversight Committee (WWOC) on March 14 2012, in adherence to the 1998 Facilities Agreement (Agreement) between the District and FORA. The Plan included a 5% rate increase which was properly noticed in the Proposition 218 notification conducted by the District in 2011 and verified by an independent auditor hired by FORA that it was necessary and appropriate. Changes and revisions to the Plan were made over several meetings of the WWOC between March and April 2012 and on May 2, 2012, the WWOC recommended the Plan for approval by the FORA Board.

However, after two failed motions to approve the Plan by the FORA Board on July 13, 2012 and July 26, 2012, on September 14, 2012, the FORA Board approved Resolution Nos. 12-6 and 12-7 adopting a compensation plan and setting rates, fees and charges for former Fort Ord base-wide water and sewer services, with the following modifications:

1. Acceptance of previous amendments to remove all references to the Regional Water Project and eliminate the 2% allocation for potential wage increases following a compensation study.
2. Elimination of the proposed 5% rate increase, to be recovered through cost saving measures and/or use of operating reserves, as per Board discussion.

According to section 7.2.1 of the Agreement,

“FORA shall to respond to MCWD within three months after receiving a proposed budget or a written request or a referral for further response pursuant to section 7.1.3. FORA’s response shall state whether FORA agrees with the proposed budget or written request. If FORA does not agree, FORA’s response shall identify each disputed element, shall state detailed reasons for the dispute, and shall specify a resolution acceptable to FORA. If FORA does not respond within three months the compensation plan contained in the latest submittal from MCWD shall be deemed adopted.”

If the Board accepts FORA's adoption of their Resolution Nos. 12-6 and 12-7 as fulfilling its obligation to respond to the District under section 7.2.1 of the Agreement, the Board has the following options to take action on the FY 2012-2013 Ord portion of the Budget:

1. Approve Resolution Nos. 2012-38 (Budget Exhibit A) and 2012-39 to adopt the Ord Community Budget with the modifications listed in FORA's approval.
2. Reject the modifications from FORA and refer the matter to mediation as provided under section 10.1 of the Agreement.

If the Board does not consider FORA's adoption of their Resolution Nos. 12-6 and 12-7 as meeting its obligation to the District under the Agreement, the Board may:

1. Consider the latest submittal of the FY 2012-2013 Ord Community Compensation Plan deemed adopted by FORA per section 7.2.1 of the Agreement and approve Resolution Nos. 2012-38 (Budget Exhibit B) and 2012-39 to adopt the FY 2012-2013 Ord Community Budget as last submitted to FORA.
2. Direct staff to inform FORA that their action was not appropriate under the Agreement and request reconsideration of its action.

Environmental Review Compliance: None required.

Prior Committee or Board Action: The Board received the draft FY 2012-2013 Budget and Budget Schedule on March 13, 2012; the Board held a Budget Workshop on March, 29, 2012; the Board received revised draft FY 2012-2013 Budgets on May 8, 2012, July 10, 2012 and August 14, 2012.

Board Goals/Objectives: *Strategic Plan Goal No. 4 – To manage the District's finances in the most effective and fiscally responsible manner.*

Financial Impact: Yes No If the Board approves Resolution Nos. 2012-38 (Budget Exhibit A) and 2012-39 there will be a serious drain on available operating reserves. In addition, in the event of an emergency or major capital need, the District may have to incur future debt. By not adhering to the planned, noticed rate increases, the District's credit rating may be compromised, thus causing higher debt costs.

Funding Source/Recap: All Accounts

Material Included for Information/Consideration: Resolution Nos. 2012-38 and 2012-39; FY 2012-2013 District Budget (Exhibit A); FY 2012-2013 District Budget (Exhibit B).

Action Required: Resolution Motion Review
(Roll call vote is required.)

Board Action

_____ Resolution No _____ Motion By _____ Seconded By _____

Ayes _____ Abstained _____

Noes _____ Absent _____

Reagendized _____ Date _____ No Action Taken _____

September 28, 2012

Resolution No. 2012-38
Resolution of the Board of Directors
Marina Coast Water District
Adopting the Ord Community Portion of the Budget and
the Ord Community Compensation Plan for FY 2012-2013
(Not including Capacity Charges and Capital Surcharges)

RESOLVED by the Board of Directors (“Directors”) of the Marina Coast Water District (“District”), at a special meeting duly called and held on September 28, 2012 at the business office of the District, 11 Reservation Road, Marina, California as follows:

WHEREAS, FORA is authorized by the FORA Act, particularly Government Code 67679(a)(1), to arrange for the provision of water, recycled water and wastewater services to the Ord Community; and,

WHEREAS, the District and FORA, entered into a “Water/Wastewater Facilities Agreement” (“the Agreement”) on March 13, 1998, and have subsequently duly amended the Agreement; and,

WHEREAS, the Agreement provides a procedure for establishing budgets and compensation plans to provide for sufficient revenues to pay the direct and indirect, short-term and long-term costs, including capital costs, to furnish the water and wastewater facilities; and,

WHEREAS, the proposed Budget and Compensation Plan for FY 2012-2013 provides for funds necessary to meet operating expenses, including employee wages and fringe benefits, purchasing or leasing supplies, equipment and materials, meeting financial reserve needs and requirements and capital expenses for sound operation and provision of the water and wastewater facilities and to enable the District to provide continued water, new water and sewer services within the existing service areas on the former Fort Ord. The rates, fees and charges apply only to the area within FORA’s jurisdictional boundaries; and,

WHEREAS, the Water/Wastewater Oversight Committee of FORA and the District’s full Board have reviewed the proposed Budget and Compensation Plan; and,

WHEREAS, pursuant to the Agreement, FORA and the District have adopted and implemented and acted in reliance on budgets and compensation plans for prior fiscal years; and,

WHEREAS, pursuant to the Agreement, FORA and the District have cooperated in the conveyance to the District of easements, facilities and ancillary rights for the water and wastewater systems on the area of the former Fort Ord within FORA’s jurisdiction; and,

WHEREAS, the District has provided water and wastewater services on the former Fort Ord by contract since 1997, and currently provides water and wastewater services to the area of the former Fort Ord within FORA’s jurisdiction under the authority of the Agreement, and provides such services to the portion of the former Fort Ord still under the Army’s jurisdiction by contract with the Army; and,

WHEREAS, FORA and the District have agreed that water conservation is a high priority, and have implemented a water conservation program in the Ord Community service area that includes public education, various incentives to use low-flow fixtures, and water-conserving landscaping. The rates, fees and charges adopted by this resolution are intended to support the water conservation program and encourage water conservation, pursuant to sections 375 and 375.5 of the California Water Code. This conservation program and these rates, fees and charges are in the public interest, serve a public purpose, and will promote the health, welfare, and safety of the Ord Community, and will enhance the economy and quality of life of the Monterey Bay community; and,

WHEREAS, monthly service fees or charges are imposed as a condition of service to customers, and monthly water quantity and sewer rates are imposed on the basis of the amount of water used or consumed by the customer. The rates, fees and charges are not imposed upon real property or upon persons as an incident of real property ownership; and,

WHEREAS, estimated revenues from the rates, fees and charges will not exceed the estimated reasonable costs of providing the services for which the rates, fees or charges are imposed; and,

WHEREAS, the rates, fees and charges have not been calculated nor developed on the basis of any parcel map, including any assessor's parcel map; and,

WHEREAS, a five-year water and wastewater financial plan and rate study prepared by Bartle Wells Associates in 2008 for the District, recommended an increase in rates, fees, charges and capacity charges for water and wastewater services to the Ord Community; and,

WHEREAS, the rates, fees and charges are adopted under the authority of Government Code Section 67679(a)(1), Water Code Sections 30000 and following and Government Code Sections 54340 and following; and,

WHEREAS, after public meetings and based upon staff's recommendations, the District Board has determined that the Budget and Compensation Plan, including the rates, fees and charges therein, should be adopted as set forth on Exhibit ___ to this Resolution; and,

WHEREAS, Government Code Section 54999.3 requires that before imposing certain capital facilities fees on certain educational and state entities, any public agency providing public utility service must negotiate with the entities receiving the service; and,

WHEREAS, capacity charges and capital surcharges for FY 2012-2013 are not included in this Resolution and will be adopted by separate Resolution; and,

WHEREAS, Section 6.08.070 of the District Code provides that twenty-five percent of all monthly charges collected by the District shall be used for long-term water supply projects, but that this requirement may be waived by the Board on an annual basis; and,

WHEREAS, the District's Board finds that, based on projected funding mechanisms and requirements, it is in the District's interest to waive the requirements of Section 6.08.070 of the District Code for FY 2012-2013; and,

WHEREAS, the District is acting to provide continued water, new water and sewer service within existing service areas on the Ord Community, and that such action is exempt from CEQA pursuant to Public Resources Code Section 21080(b)(8) and Section 15273 of the State CEQA Guidelines codified at 14 CCR §15273.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Board of Directors of the Marina Coast Water District does hereby approve and adopt the FY 2012-2013 Budget and Compensation Plan for water and wastewater services to the Ord Community.
2. The District is authorized to charge and collect rates for provision of water and wastewater services within the boundaries of the Fort Ord Reuse Authority in accordance with the rates, fees and charges set forth in Exhibit _____. The District is further authorized to use the same rates, fees and charges in providing services to the area of Ord Community within the jurisdiction of the U.S. Army.
3. The rates, fees and charges authorized by this Resolution shall not exceed the estimated reasonable costs of providing the services for which the rates, fees or charges are imposed.
4. The requirements of Section 6.08.070 of the District Code are waived for FY 2012-2013.

PASSED AND ADOPTED on September 28, 2012, by the Board of Directors of the Marina Coast Water District by the following roll call vote:

Ayes: Directors _____

Noes: Directors _____

Absent: Directors _____

Abstained: Directors _____

Dan Burns, President

ATTEST:

Jim Heitzman, Secretary

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. 2012-38 adopted September 28, 2012.

Jim Heitzman, Secretary

September 28, 2012

Resolution No. 2012-39
Resolution of the Board of Directors
Marina Coast Water District
Adopting the Capacity Charge Element of the Budget
and the Ord Community Compensation Plan for FY 2012-2013

RESOLVED by the Board of Directors (“Directors”) of the Marina Coast Water District (“District”), at a special meeting duly called and held on September 28, 2012 at the business office of the District, 11 Reservation Road, Marina, California as follows:

WHEREAS, Marina Coast Water District (“District”) staff prepared and presented the draft FY 2012-2013 Budget which includes projected revenues, expenditures and capital improvement projects for the Ord Community Water, Recycled Water and Wastewater systems, including the area within the jurisdiction of FORA and the area remaining within the jurisdiction of the U.S. Army; and,

WHEREAS, FORA is authorized by the FORA Act, particularly Government Code 67679(a)(1), to arrange for the provision of water and wastewater services to the Ord Community; and,

WHEREAS, the District and FORA, entered into a “Water/Wastewater Facilities Agreement” (“the Agreement”) on March 13, 1998, and have subsequently duly amended the Agreement; and,

WHEREAS, the Agreement provides a procedure for establishing budgets and compensation plans to provide for sufficient revenues to pay the direct and indirect, short-term and long-term costs, including capital costs, to furnish the water and wastewater facilities; and,

WHEREAS, the proposed Budget and Compensation Plan for 2012-2013 provides for funds necessary to meet operating and capital expenses for sound operation and provision of the water, recycled water and wastewater facilities and to enable the District to provide continued water, recycled water and sewer services within the existing service areas on the former Fort Ord. The rates, fees and charges adopted by FORA apply only to the area within FORA’s jurisdictional boundaries; and,

WHEREAS, a financing study prepared by Citigroup Global Markets Inc. in 2005 for the District recommended the adoption of capacity charges as an element of financing capital facilities for water and wastewater services to the Ord Community; and,

WHEREAS, the Water/Wastewater Oversight Committee of FORA and the District’s full Board have reviewed the proposed Budget and Compensation Plan; and,

WHEREAS, pursuant to the Agreement, FORA and the District have adopted and implemented and acted in reliance on budgets and compensation plans for prior fiscal years; and,

WHEREAS, pursuant to the Agreement, FORA and the District have cooperated in the conveyance to the District of easements, facilities and ancillary rights for the water, recycled water and wastewater systems on the area of the former Fort Ord within FORA's jurisdiction; and,

WHEREAS, the District has provided water and wastewater services on the former Fort Ord by contract since 1997, and currently provides water and wastewater services to the area of the former Fort Ord within FORA's jurisdiction under the authority of the Agreement, and provides such services to the portion of the former Fort Ord still under the Army's jurisdiction by contract with the Army; and,

WHEREAS, capacity charges are imposed as a condition of service to customers. The charges are not imposed upon real property or upon persons as an incident of real property ownership; and,

WHEREAS, estimated revenues from the capacity charges will not exceed the estimated reasonable costs of providing the facilities and services for which the charges are imposed; and,

WHEREAS, the capacity charges have not been calculated nor developed on the basis of any parcel map, including any assessor's parcel map; and,

WHEREAS, the amount of the increase in capacity charges exceeds the percentage increase in the Implicit Price Deflator for State and Local Government Purchases, as determined by the Department of Finance. As a result, the District cannot charge the increased capacity fee to any school district, county office of education, community college district, state agency, or the University of California before first negotiating the increases with those entities in accordance with District Code section 6.16.020 and Government Code section 54999.3. Although these sections also apply to California State University at Monterey Bay, the District has complied with its obligation to negotiate with it and can charge the increased amounts to CSUMB as a result of and as limited by a Settlement Agreement and Mutual Release dated June 1, 2006, by which the District and California State University made an agreement regarding the amount of all future capacity charges. Accordingly, the District can charge the increased capacity charges as limited by the Settlement Agreement and Mutual Release immediately to CSUMB. The increased capacity charges to any other school district, state agency, county office of education, community college district or the University of California will be effective only when negotiations are concluded with those entities; and,

WHEREAS, after a public meeting and based upon staff's recommendations, the Board has determined that the capital elements of the Budget and Compensation Plan, including the capacity charges therein, should be adopted as set forth on Exhibit ___ to this Resolution; and,

WHEREAS, the capacity charges set forth on Exhibit ___ to this Resolution have not changed from those approved in the FY 2011-2012 Budget and Compensation Plan; and,

WHEREAS, Government Code Section 54999.3 requires that before imposing certain capital facilities fees on certain educational and state entities, any public agency providing public utility service must negotiate with the entities receiving the service; and,

WHEREAS, FORA is the lead agency for the adoption of rates, fees and charges for the area of the Ord Community under FORA's jurisdiction, and that in adopting rates and charges for that area, the District is acting as a responsible agency and relying on FORA's compliance with the requirements of the California Environmental Quality Act ("CEQA"); that the District has previously adopted rates, fees and charges for its jurisdictional service area; and that, in approving rates, fees and charges for the area of Ord Community within the jurisdiction of the U.S. Army, the District is acting to provide continued water and sewer service within existing service areas on the Ord Community, and that such action is exempt from CEQA pursuant to Public Resources Code Section 21080(b)(8) and Section 15273 of the State CEQA Guidelines codified at 14 CCR §15273.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS,

1. The Board of Directors of the Marina Coast Water District does hereby approve and adopt the capital elements of the FY 2012-2013 Budget for water, recycled water and wastewater services to the Ord Community.
2. The capital elements of the compensation plan for the area of Ord Community within FORA's jurisdiction, including capacity charges, set forth on Exhibit ___ to this Resolution are hereby approved and adopted. The District is authorized to charge and collect capacity charges for provision of water and wastewater services within the boundaries of the Fort Ord Reuse Authority in accordance with the schedule set forth in Exhibit ___. The District is further authorized to use the same charges in providing services to the area of Ord Community within the jurisdiction of the U.S. Army.
3. The charges authorized by this Resolution shall not exceed the estimated reasonable costs of providing the services for which the charges are imposed.
4. The District will comply with the requirements of Government Code section 54999.3 before imposing a capital facilities fee (as defined in Government Code section 54999.1) on any school district, county office of education, community college district, the California State University, the University of California or state agency.

PASSED AND ADOPTED on September 28, 2012, by the Board of Directors of the Marina Coast Water District by the following roll call vote:

Ayes: Directors _____

Noes: Directors _____

Absent: Directors _____

Abstained: Directors _____

Dan Burns, President

ATTEST:

Jim Heitzman, Secretary

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. 2012-39 adopted September 28, 2012.

Jim Heitzman, Secretary