Return to Agenda

PLANNING AGREEMENT TO AMEND AND TO EXTEND AGREEMENT FOR EXERCISE OF EXCLUSIVE RIGHT TO NEGOTIATE FOR PURCHASE OF PRE-1914 WATER RIGHT

This Planning Agreement to Amend and Extend Agreement For Exercise of Exclusive Right to Negotiate For Purchase of Pre-1914 Water Right ("this Planning Agreement") is made effective _____ ___, 2013 by and between Clark Colony Water Company, a California Corporation (CCWC) and Marina Coast Water District, a County Water District organized and operating under sections 30000 and following of the California Water Code (MCWD), collectively the "Parties."

RECITALS

A. CCWC claims on behalf of its shareholders a perfected pre-1914 surface-water appropriative right (the "Water Right") to divert up to 13,500 acre feet per year of water from the Arroyo Seco, a tributary of the Salinas River in Monterey County, CA, for irrigation uses within CCWC's Service area in and in the vicinity of Greenfield, CA. CCWC is willing to sell the Water Right.

B. MCWD wishes to carefully analyze and consider purchasing the Water Right to augment urban water supplies, and as an alternative means of facilitating mitigation of potential environmental effects associated with groundwater use in the area served by MCWD.

C. CCWC and MCWD executed a Negotiation Agreement on December 13, 2007, which provided MCWD with the exclusive right to negotiate for CCWC's water right.

D. CCWC and MCWD executed a Planning Agreement On January 5, 2009 amending and extending the December 13, 2007 Negotiation Agreement (the "2009 Planning Agreement").

E. CCWC and MCWD intend by this Planning Agreement to memorialize and commit to the actions required for CCWC and MCWD to complete analysis and negotiation of a Purchase Agreement for the Water Right. The parties specifically intend to avoid any commitments and actions that would, in light of all surrounding circumstances, commit MCWD as a practical matter to purchase the Water Right unless and until after MCWD files a CEQA Notice of Determination. (See Save Tara v. City of West Hollywood (Cal. Supreme Ct., No. S151402, 10-30-08) 2008 WL 4741084; Cal.Code Regs., tit. 14, § 15262)

AGREEMENT

Based on the Recitals and the mutual promises made in this Planning Agreement, CCWC and MCWD agree as follows:

1. This Planning Agreement amends and extends the 2009 Planning Agreement for an additional period, to September 31, 2014, allowing extended time for MCWD to analyze the effects of acquiring the water right.

2. Upon execution of this Planning Agreement MCWD will pay $50,000 to CCWC for the exclusive right to negotiate with CCWC to purchase the Water Rights.

3. Payment(s) made by MCWD to CCWC under this Planning Agreement will be applied to the purchase price if MCWD buys the Water Rights. If MCWD and CCWC do not execute a final agreement for purchase of the Water Right (Agreement for Purchase), CCWC shall keep the payment(s) received from MCWD and CCWC shall have no further obligations to MCWD.

4. Upon execution of this Planning Agreement, the parties will work together to develop the project description for utilization of the CCWC Water Right by MCWD. The project description will include the consideration of surface water conjunctive use options for MCWD in lieu of groundwater pumping. MCWD will undertake, at MCWD's cost, preparation and certification of an appropriate environmental document pursuant to the California Environmental Quality Act (CEQA) for a possible purchase of the Water Right, using the 'developed' project description.

During preparation of the project description, but no later than 60 days after execution of this agreement, MCWD and CCWC shall finalize the development of a timeline identifying as a minimum when the draft CEQA document will be scheduled for release and when the final CEQA document will be scheduled for certification. Each party will then use its best efforts to adhere to the timeline developed.

CCWC and MCWD will collaborate with The Nature Conservancy (TNC) in an effort to include in the project description the goals and objectives of TNC's efforts as to the fishery habitat and resources on the Arroyo Seco.

5. MCWD staff and CCWC will use their best efforts to negotiate the terms and conditions for MCWD's purchase of the Water Right and develop an Agreement for Purchase by not later than 90 days after the first public release of the draft CEQA document, in accordance with and informed by the environmental analysis conducted pursuant to paragraph 4 of this Planning Agreement, for recommendation to the MCWD Board for approval.

6. Within 60 days after MCWD files the Notice of Determination for the final CEQA document, the MCWD Board will consider and decide whether to approve the Agreement for Purchase or cease negotiations with CCWC.

If the MCWD Board decides to cease negotiations with CCWC, MCWD shall notify CCWC of the Board's decision by certified mail and facsimile within 10 days of the date of their decision, and this Planning Agreement shall expire on the date the certified letter was sent and neither Party shall have any further obligation pursuant to this Agreement.

7. Neither Party is bound to enter into a final Agreement for Purchase unless approved by both Parties. The Parties are bound with respect to the extension authorized by this Agreement.

8. This Planning Agreement may be changed only by a written amendment signed by CCWC and MCWD. No waiver, consent, modification or change of terms shall bind any party unless in made in a writing signed by CCWC and MCWD.

9. If any provision of this Planning Agreement is found or deemed to be invalid, this Agreement shall be construed as not containing such provision and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are declared severable.

10. The parties agree in good faith to attempt to resolve amicably, without litigation, any dispute arising out of or relating to this Agreement. In the event that any dispute cannot be resolved through direct discussions, the parties agree to endeavor to settle the dispute by mediation. Any party may make a written demand for mediation, which demand shall specify the facts of the dispute. The matter shall be submitted to a mediator who shall hear the matter and provide an informal nonbinding opinion and advice in order to help resolve the dispute. The mediator's fee shall be shared equally by the parties. If the dispute is not resolved through mediation, the matter may be submitted to the judicial system, in which event all litigation expenses, witness fees, court costs and attorneys' fees shall be paid to the prevailing party as determined by the Court.

11. All notices hereunder shall be in writing, sent by certified mail, return receipt requested, or by mutually recognized overnight carrier or by facsimile transmission addressed to the other party as follows:

To MCWD:

General Manager
11 Reservation Road
Marina, CA 93933-2099
Phone No.: (831) 384-6131
Fax No.: (831) 883-5995

To CCWC:

Michael Griva
41620 Peach St.
Greenfield, CA 93927
Phone No.: (831) 595-5291
Fax No.: (831) 674-0874

The address or fax number 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 above provided.

12. This Planning Agreement has been arrived at through negotiation between the Parties. Neither party is to be deemed the party which prepared this Negotiating Agreement within the meaning of Civil Code section 1654.

13. This Planning Agreement may be executed in counterparts. Each fully executed counterpart shall be deemed a duplicate original, and all counterparts which together contain the signatures of the Parties shall be deemed, when attached together, one complete and integrated original document.

14. WHEREFORE, CCWC and MCWD have caused this Planning Agreement to be signed at Monterey County, California, effective on the date first set forth above.

WHEREFORE, CCWC and MCWD have caused this Planning Agreement to be signed at Monterey County, California, effective on the date first set forth above.

DRAFT

CLARK COLONY WATER COMPANY

By_____

, President

By_____

, Secretary

MARINA COAST WATER DISTRICT

By_____

, President

By_____

, Secretary

Approved as to form:

_____

MCWD Legal Counsel