

Marina Coast Water District
Agenda Transmittal

Agenda Item: 5-B

Meeting Date: April 4, 2011

Submitted By: Jim Heitzman

Presented By: Jim Heitzman

Agenda Title: Review District Responses to the 2010 Monterey County Grand Jury Final Report and Provide Direction to the General Manager

Detailed Description: The Board of Directors is requested to review the District's responses to the Monterey County Grand Jury Report and provide direction to the General Manager.

On January 10, 2011, the Monterey County Grand Jury released their 2010 Monterey County Grand Jury Final Report (Report). In that Report, they reviewed the Monterey County Regional Water Project and made several findings. Agencies are asked to respond to the findings, and the deadline for the District's response is April 11, 2011.

Staff has prepared responses to the findings and is presenting them to the Board of Directors for review.

Prior Committee or Board Action: None.

Board Goals/Objectives: *Strategic Plan, Mission Statement – 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.*

Financial Impact: _____ Yes X No

Funding Source/Recap: None.

Material Included for Information/Consideration: The Marina Coast Water District responses to the 2010 Monterey County Grand Jury Final Report.

Staff Recommendation: The Board of Directors provide direction to the General Manager on the prepared responses to the 2010 Monterey County Grand Jury Final Report.

Action Required: _____ Resolution X Motion _____ Review

Board Action

_____ Resolution No _____ Motion By _____ Seconded By _____

Ayes _____ Abstained _____

Noes _____ Absent _____

Reagendized _____ Date _____ No Action Taken _____

Monterey County Regional Water Project

Summary

PURPOSE OF THE INVESTIGATION

The 2010 Monterey County Civil Grand Jury investigated the proposed Monterey County Regional Water Project focusing on the desalination plan. Concerns over the fairness of governance, oversight, and feasibility as expressed by newspapers, editorials, and public testimony before the California Public Utilities Commission (CPUC) and the Administrative Law Judge (ALJ) during public hearings prompted this investigation.

The Civil Grand Jury believes that reasonable people in a position of public trust have the responsibility to work together to find solutions for the public benefit. The proposed project provides a solid foundation on which to build. It is the hope of the Civil Grand Jury that, as the project matures and additional public agencies are added, the parties remain flexible and work together to find the most appropriate means to meet the concerns expressed by critics of the project.

The Civil Grand Jury supports the Regional Water Project, but believes it can be improved.

GLOSSARY

CalAm	California American Water Corporation
CPUC	California Public Utilities Commission
MCWD	Marina Coast Water District
MCWRA	Monterey County Water Resources Agency
MPWMD	Monterey Peninsula Water Management District
MRWPCA	Monterey Regional Water Pollution Control Agency
SWRCB	State Water Resources Control Board
Order 95-10	State Water Resources Control Board Order 95-10

BACKGROUND FOR THE INVESTIGATION

After years of inaction, there is finally a critical sense of urgency to find a solution to the Monterey Peninsula's water needs. Our present crisis began 15 years ago when the State Water Resources Control Board (SWRCB), a division of the California Environmental Protection Agency, issued Order 95-10. This order instructed California American Water (CaIAm) to terminate all unlawful diversions from the Carmel River and find a replacement source of water. There were several failed attempts to find a new source of water over those 15 years. The deadline is set for December 31, 2016. If another source of water is not available by then, the quality of life and economic viability of the peninsula will be seriously affected. The current desalination project is a means to comply with the provisions of Order 95-10.

It is a widely held opinion that the desalination plant is the best viable long-term solution to the peninsula's water problems. The desalination project consists of a four-party contract between the Monterey County Water Resources Agency (MCWRA), Marina Coast Water District (MCWD), CalAm, and the Monterey Regional Water Pollution Control Agency (MRWPCA). In its most basic terms, each of these entities will provide the following functions:

- MCWRA will own and operate the wells that supply brackish water to the desalination plant
- MCWD will own and operate the desalination facility
- CalAm will install and own the pipes that deliver potable water to the ratepayers
- MRWPCA will take the salts and impurities which are extracted from the desalinated water, process them, and return them to the ocean

INVESTIGATIVE METHODOLOGY

- Interviewed the management and/or directors of:
 - MCWRA
 - MCWD
 - MPWMD
 - MRWPCA
- Interviewed Monterey Peninsula mayors
- Interviewed members of the Monterey County Board of Supervisors
- Attended public hearings held by the CPUC on the proposed desalination projects
- Attended public meetings on the Regional Water Project held in Carmel Valley and Pacific Grove
- Attended a public meeting on the Regional Desalination Project and Agreement held in Monterey by the Division of Ratepayer Advocates on May 4, 2010
- Toured MRWPCA facility
- Toured a local state-of-the-art desalination facility
- Reviewed local media coverage of water issues in Monterey County
- Reviewed MCWD publications including Water for Monterey County: Project Update, June 2009 and the Monterey Regional Water Supply Project (Phase I)
- Reviewed web sites pertaining to Monterey County water issues, including the Regional Water Project, www.waterformontereycounty.org
- Reviewed previous IS years of Monterey County Civil Grand Jury reports pertaining to water issues
- Researched water conservation in Monterey County
- Reviewed Environmental Impact Reports for California Coastal Water Project
- Reviewed Order 95-10 (July 6, 1995) and Order 2009-0060 (October 20, 2009)
- Reviewed all documents filed in Proceeding A.04090 19 currently before the CPUC

DISCUSSION

There have been concerns expressed over parts of the agreement such as transparency, oversight, feasibility, and the restrictions imposed by the Monterey County Water Resources Agency Act.

AGENCY ACT

The Monterey County Water Resources Agency Act prohibits groundwater from being exported out of the Salinas River Groundwater Basin.⁹ This is the underlying requirement that mandates that the fresh water portion of the brine coming from the wells intended for the desalination plant remain within the Salinas Basin. It should be noted that the MRWPCA recycles 11,814 acre feet of waste water that comes from the Carmel River basin and the Seaside aquifer. This reclaimed water is utilized by agriculture in the Salinas Basin. The Carmel River water used by Monterey residents is sent as waste water to MRWPCA and receives tertiary treatment before being distributed out into the Salinas basin as part of the agricultural program near the Salinas River. Currently, there are no plans for reciprocity with the Monterey Peninsula residents for using some of this treated waste water.

TRANSPARENCY

Once the proposed plan is approved by the CPUC and ALI, the public agencies MCWD, MCWRA, and MRWPCA will conduct their meetings in accordance with California's open meeting law, the Brown Act. This guarantees the public's right to attend and participate in meetings of these legislative bodies. Originally the MPWMD was a party to the agreement and would have provided public representation of the peninsula ratepayers. An agreement couldn't be reached as to the exact role that the MPWMD would play. Consequently, the MPWMD is not one of the governing agencies in this project. The result is a lack of direct representation for some of the ratepayers who are underwriting this project. Some are represented by the Municipal Advisor position, but the unincorporated areas have no direct representation. The Civil Grand Jury was impressed by the depth and scope of the technical expertise that all of these agencies were able to bring to bear in solving the water problem. It is unfortunate that the MPWMD does not have a role, as it could have provided another valuable source of local water expertise. The MPWMD has board members elected by the region receiving the water and water professionals whose experience has been underutilized in this project.

Due to justifiable concern by the public, the city mayors have negotiated for a non-voting seat on the Advisory Committee to fill this perceived void. The Municipal Advisors position provides valuable oversight for the ratepayers. Monterey, the city with the largest population, elected not to participate in this position. This position has no voting rights to ensure that the ratepayers concerns are given appropriate review.

⁹Monterey County Water Resources Agency Act 4/11/95 Section 52-21

OVERSIGHT

The water plan was developed between the four parties, the MCWRA, MCWD, CalAm, and the MRWPCA, who laid out in the contract the activities that each of these members would perform to perfect the plan.

The Civil Grand Jury also found that the current plan did not provide for strong financial oversight. An independent oversight committee could be formed from local experts to provide financial review of major project costs. Several of the communities that will receive this water already have functioning desalination plants and are familiar with their problems. The current desalination plans are designed to furnish only enough water to offset reductions in extraction from the Carmel River to meet the requirements of Order 95-10. Incorporating new areas and adding more communities to the existing water distribution system will necessitate having an agency with the willingness and capability to assume oversight of all the various stakeholders with a vision for serving the water needs of greater Monterey County.

FEASIBILITY

So far, the plans for the current desalination plant as conceived by water experts seem to be viable. A review of other communities in the United States with large scale desalination facilities, however, has shown a high frequency of technical problems over a protracted period of time.

FINDINGS OF THE INVESTIGATION

F8.1. While the Municipal Advisor role provides valuable public oversight, the appointed members lack long-term continuity and may lack expertise to effectively monitor complex water issues without the assistance of water professionals.

F8.2. Some cities on the Monterey Peninsula already have constructed small scale desalination plants.

F8.3. The Municipal Advisor role could be improved if the City of Monterey were represented by being a member.

F8.4. It would be in the public interest for MPWMD to have a role in the project, so as to make available its considerable water expertise.

MCWD partially agrees. MPWMD could continue its role and relationship with CalAm. Disagree that while MPWMD brings considerable expertise in some aspects of water, it does not bring extensive expertise in developing, permitting, financing, designing, constructing, operating, maintaining or reporting on water supplies and or delivery systems.

F8.5. There seems to be no independent financial oversight.

MCWD disagrees. Independent financial oversight is provided by a review of the financial

plan by an independent expert party such as Piper Jaffrey. In addition, there are cost controls in the WPA, including value engineering requirements, constructability reviews, oversight provided by the Boards of MCWD, MCWRA, Advisory Committee and by CalAm. Monthly reports are required by the Water Purchase Agreement (WPA) to both the public entities, the Advisory Committee and by CalAm to the Division Rate Payer Advocate. In addition, there is review by the Community Involvement Forum.

F8.6. Peninsula recycled waste water is not being used to offset an equal amount of Salinas Basin water for export.

F8.7. There are many areas of concern In the technical aspects of this large-scale desalination project.

MCWD disagrees. The Project intends to use proven technologies.

F8.8. The current desalination plan is to replace Carmel River water. Vital service upgrades for schools and nursing homes cannot happen without new water.

RECOMMENDATIONS OF THE CIVIL GRAND JURY

R8.1. The mayors are encouraged to formalize an advisory support function established from the cities' staff members with the most expertise on water issues to enhance their Municipal Advisor role. [Related Finding: F8.1]

R8.2. Grant the Municipal Advisor role a voting position, as many members are familiar with desalination operations. [Related Finding: F8.2]

MCWD disagrees. Granting the Municipal Advisor a voting role makes financing the project improbable.

R8.3. The Monterey City Council should re-evaluate its position. It would be far better for the residents of the City of Monterey to have representation on the Advisory Committee through the Municipal Advisor role. [Related Finding: F8.3]

R8.4. MRWPCA, MCWD, MCWRA, and CalAm should continue to work to come to some agreement for participation of MPWMD. Because these agency positions may have become entrenched, the Monterey County Board of Supervisors is encouraged to intervene to facilitate some agreement to include MPWMD. [Related Finding: F8.4]

MCWD disagrees. MPWMD voted against participating on the Advisory Committee.

R8.5. Consider the formation of an independent financial overview committee to review major functions of the project. [Related Finding: F8.5]

The recommendation is in place. Independent financial oversight is provided by a review of the financial plan by an independent expert party such as Piper Jaffrey. In addition, there are cost controls in the Water Purchase Agreement, including value engineering requirements, constructability reviews, oversight provided by the Boards of MCWD, MCWRA, Advisory Committee and by CalAm. Monthly reports are required by the Water Purchase Agreement to both the public entities, the Advisory Committee and by CalAm to the Division Rate Payer Advocate. In addition, there is review by the Community Involvement Forum.

R8.6. MPWMD and MCWRA should pursue legal clarification or adjudication to allow Peninsula recycled water to be used to offset an equal amount of Salinas Basin water for export to the Monterey Peninsula. [Related Finding: F8.6]

R8.7. It would be prudent to continue work toward additional solutions for more water because of the technical high risk elements of this plan and to assist communities that need to upgrade their outdated municipal services. MCWRA, MPWMD, MRWPCA, and CalAm should pursue all avenues of finding new water for the community. [Related Findings: F8.7, F8.8]

Agreed and would include MCWD.

COMMENDATIONS

The MCWRA, MCWD, CalAm, and the MRWPCA are to be commended for setting in motion and following through with a plan to improve the availability of water in Monterey County and on the Peninsula.

REQUIRED RESPONSES

Marina Coast Water District Board of Directors:

Findings: F8.4, F8.5, F8.7
Recommendations: R8.2, R8.4, R8.5, R8.7

Monterey Regional Water Pollution Control Agency Board of Directors:

Findings: F8.5, F8.6
Recommendations: R8.2, R8.4, R8.5, R8.6, R8.7

Monterey Peninsula Water Management District Board of Directors:

Findings: F8.4, F8.5, F8.6, F8.7, F8.S
Recommendations: R8.2, R8.4, R8.5, R8.6, R8.7

Monterey County Board of Supervisors:

Findings: F8.4, F8.8
Recommendation: R8.4

Monterey City Council:

Findings: F8.1, F8.2, F8.3
Recommendations: R8.1, R8.2, R8.3

Pacific Grove City Council:

Findings: F8.1, F8.2
Recommendations: R8.1, R8.2

Carmel-by-the-Sea City Council:

Findings: F8.1, F8.2
Recommendations: R8.1, R8.2

Seaside City Council:

Findings: F8.1, F8.2
Recommendations: R8.1, R8.2

Sand City City Council:

Findings: F8.1, F8.2
Recommendations: R8.1, R8.2

REQUESTED RESPONSES

California American Water:

Findings: F8. 7, F8.8
Recommendations: R8.7, R8.8

Monterey County Water Resource Agency Board of Directors:

Findings: F8.4, F8.5, F8.6, F8.7, F8.8
Recommendations: R8.2, R8.4, R8.5, R8.6, R8.7

Responses must comply with the following:

CALIFORNIA PENAL CODE SECTION 933.05

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.