

Resolution No. 11-03
Resolution of the Board of Directors
Fort Ord Reuse Authority
Adopting the Budget and the Ord Community Compensation Plan for FY 2011-2012
not including Capacity Charges

June 10, 2011

RESOLVED by the Board of Directors ("Directors") of the Fort Ord Reuse Authority ("FORA"), at a regular meeting duly called and held on June 10, 2011 at the business office of FORA at 910 2nd Avenue, Marina California as follows:

WHEREAS, Marina Coast Water District ("District") Staff prepared and presented the draft FY 2011-2012 Budget (**Attachment A**) 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 Agreement, as amended, provides that FORA and the District will each adopt the annual Budget and Compensation Plan by resolution; and,

WHEREAS, the proposed Budget and Compensation Plan for 2011-2012 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 MCWD 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, the Water/Wastewater Oversight Committee of FORA and the MCWD full Board have reviewed the proposed Budget and Compensation Plan; and,

WHEREAS, pursuant to the Agreement, FORA and MCWD 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 MCWD cooperated in the conveyance to MCWD 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, MCWD 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 MCWD 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 Ord Community, and will enhance the economy and quality of life of the Monterey Bay community; 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, will not be used for any purpose other than that for which the fee or charge was imposed, will not exceed the proportional cost of the service attributable to each identified parcel upon which the fee or charge is proposed for imposition and no fee or charge will be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question; and,

WHEREAS, after a public meeting based upon staff's recommendations, the Board has determined that the Budget and Compensation Plan, including the rates, fees and charges therein, should be adopted as set forth on **Attachment A** to this Resolution; and,

WHEREAS, FORA has held a joint hearing with the District on the rates, fees and charges, not including Capacity Charges, for the Compensation Plan pursuant to and in accordance with Section 6 of Article XIID of the California Constitution; and

WHEREAS, at the joint hearing, the Board heard and considered all protests to the Compensation Plan and the rates, fees and charges proposed and finds that written protests were submitted by less than a majority of the record owners of each identified parcel upon which the fee or charge is proposed for imposition; and,

WHEREAS, Capacity Charges for the FY 2011-2012 are the subject of and will be adopted by a separate Resolution; 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, recycled 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 Fort Ord Reuse Authority does hereby approve and adopt FY 2011-2012 Budget and Compensation Plan, not including Capacity Charges for water, recycled 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 FORA in accordance with the rates, fees and charges set forth in **Attachment A**, not including Capacity Charges. 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.

PASSED AND ADOPTED on June 10, 2011, by the Board of Directors of the Fort Ord Reuse Authority by the following roll call vote:

Ayes: Directors _____

Noes: Directors _____

Absent: Directors _____

Abstained: Directors _____

Dave Potter, Chair

ATTEST:

Michael A. Houlemard, Jr., Secretary

CERTIFICATE OF SECRETARY

The undersigned Secretary of the Board of the Fort Ord Reuse Authority hereby certifies that the foregoing is a full, true and correct copy of Resolution No. 11-03 adopted June 10, 2011.

Michael A. Houlemard, Jr., Secretary

Resolution No. 11-04
Resolution of the Board of Directors
Fort Ord Reuse Authority
Adopting the Capacity Charge element of the Budget and the Ord Community Compensation
Plan for FY 2011-2012

June 10, 2011

RESOLVED by the Board of Directors ("Directors") of the Fort Ord Reuse Authority ("FORA"), at a regular meeting duly called and held on June 10, 2011 at the business office of FORA at 910 2nd Avenue, Marina California as follows:

WHEREAS, Marina Coast Water District ("District") Staff prepared and presented the draft FY 2011-2012 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 Agreement, as amended, provides that FORA and the District will each adopt the annual Budget and Compensation Plan by resolution; and,

WHEREAS, the proposed Budget and Compensation Plan for 2011-2012 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 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, no written requests are on file with the District for mailed notice of meetings on new or increased fees or service charges pursuant to Government Code Section 66016. At least 10 days prior to the meeting, the District made available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service; 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 **Attachment A** to this Resolution; and

WHEREAS, the capacity charges set forth on **Attachment A** to this Resolution have not changed from those approved in the FY 2010-2011 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 Fort Ord Reuse Authority does hereby approve and adopt the capital elements of the FY 2011-2012 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 **Attachment A** 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 **Attachment A**. 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 June 10, 2011, by the Board of Directors of the Fort Ord Reuse Authority by the following roll call vote:

Ayes:	Directors	_____
Noes:	Directors	_____
Absent:	Directors	_____
Abstained:	Directors	_____

Dave Potter, Chair

ATTEST:

Michael A. Houlemard, Jr., Secretary

CERTIFICATE OF SECRETARY

The undersigned Secretary of the Board of the Fort Ord Reuse Authority hereby certifies that the foregoing is a full, true and correct copy of Resolution No. 11-04 adopted June 10, 2011.

Michael A. Houlemard, Jr., Secretary