

# **Fort Ord Reuse Authority Administrative Committee Meeting**

## **June 18, 2014**

### Outstanding policy issues raised during discussion of the MCWD/FORA Facilities Agreement and Ord Community budget:

#### **1. Establishing an Ord Community Rate Payer Advisory Committee**

MCWD staff has committed to bring this item to the District Board in July 2014 for discussion and guidance forward.

#### **2. FORA Voluntary Contribution v. MCWD Capacity charge**

This issue has been well documented in FORA Board reports describing the FORA Capital Improvement Program and Ord Community budget. MCWD met with representatives of the development community regarding their proposed capacity charge. MCWD informed FORA that developers have reached a level of comfort with the MCWD proposed capacity charge. FORA staff and consultants concur that the proposed capacity charge is adequate to fund Ord Community capital expenses, and provides a more efficient way forward to develop an augmented water source.

Steps forward: The FORA CFD/development fee would have to be reduced simultaneously and commensurately (proposed in the FY 2014/15 FORA CIP), to avoid double charging the FORA Developer Fee/MCWD Capacity Charge (both would go into effect 7/5/14).

#### **3. Ord Community annexation and associated customer voting rights**

MCWD has begun the annexation process under the auspices of LAFCO. The LAFCO process requires development of a Service Area Study before initiating further steps. MCWD has complied with LAFCO requests and awaits further instruction from LAFCO. MCWD has included in its approved five year strategic plan the goal of annexing the Ord Community (Strategic Goal 6.1 attached). An overall timeline for the LAFCO Annexation process and an outline of tasks to be accomplished during the coming year is **attached**. The ultimate goal is to provide appropriate representation and voting power to all system customers.

#### **4. Water augmentation timing and alternatives**

The MCWD budget, rates and fees must be approved in order for the two agencies to begin serious discussion of water augmentation timing and alternatives. Failure of the so called 'regional desalinization project' necessitates rethinking the approach MCWD and FORA want to take. The Peninsula is proceeding with another desalinization project with California American Water Company as Lead Agency. It is possible that a portion of Fort Ord's needed water augmentation could come from that project through a form of negotiation and/or customer service agreement, but details of such an arrangement would be a long way off. It should remain as one of several options. Another option is to default back to the so-called Regional Urban Water Augmentation Program (RUWAP) which is a hybrid program that contemplates use of both reclaimed and desalinated water. An agreement for the reclaimed water portion would have to be finalized with Monterey Regional Water Pollution Control Agency (MRWPCA), and the desalinated portion could be provided by the Peninsula facility cited above, expansion of the currently moth-balled MCWD plant, or agreement with one of the other entities currently contemplating desalinated water. Details would have to be negotiated to pursue or modify the current RUWAP but there is the advantage that some of the crucial California Environmental Quality Act (CEQA) analysis has already been completed. Finally, there are potential surface water solutions to discuss that might be much more cost effective while not harming the environment or posing a threat to water quality. FORA staff have suggested that now is the right time for MCWD to begin making a series of educational presentations to the FORA Board about these various alternatives, and MCWD has agreed to provide a presentation in the near future. The District has outlined five steps to be undertaken in the next five years (Strategic Plan Elements 1.1 through 1.5, attached). The five year Strategic Plan was approved earlier this year and the District has already begun working to complete Task 1.1.

## **5. Use of Reserves**

A. The last Compensation Plan the FORA Board adopted was in September of 2012. The plan was adopted with direction from the FORA Board to recover costs through the use of operating reserves. The consultant who performed the recent MCWD Rate Study has indicated that MCWD reserves have dropped to a level that is below industry standard. If the current rate increase proposal goes into effect, this issue will be solved over time. A portion of the reserves were applied to covering legal and other costs related to unwinding the 'failed regional desalinization' project. It is currently ill advised for MCWD to continue to operate with low reserve capacity, but they hope to recover some of the dollars invested in the prior project as credits in any future settlement, legal resolution or negotiated future project, and those dollars could be credited back to reserves, potentially accelerating construction of needed CIP projects. It is likely that it will take another year or two for this issue to be fully resolved in the courts or otherwise.

## **6. Facilities Agreement Language re: Three Month Budget review period**

A. The 1998 Facilities Agreement states that "MCWD's General Manager shall submit a proposed budget to the committee (WWOC)...by March 30 of every year" and further states "FORA shall respond to MCWD within three months after receiving a proposed budget...FORA's response shall state whether FORA agrees with the proposed budget...If FORA does not agree, FORA's response shall [1] identify each disputed element, shall [2] state detailed reasons for the dispute, and shall [3] 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."

MCWD and FORA counsels have reviewed the agreement. MCWD's legal position is that the budget was first proposed to FORA at the February 27, 2014 WWOC meeting and that three months concluded on May 27, 2014. FORA's position is that the submittal is not complete until all questions raised by the FORA WWOC, Administrative Committee, and Board of Directors have been adequately addressed. It is clear that the Facilities Agreement language is unwieldy and does not always yield a recommendation conducive to timely analysis and adjudication. At any rate, both FORA and MCWD staffs have committed to continue to work collegially to provide answers to all questions that have been raised by these bodies and that the ultimate goal is for the two Boards to come to a meeting of the minds as to how best to go forward regarding the policy questions noted in this response. It is anticipated that both Boards may take actions that protect their interests and legal positions but that will not interfere with progress moving forward.

Steps forward: MCWD will continue to work with FORA and the WWOC to further understanding of the MCWD FY 2014/15 Ord Community budget and policy related issues.

## **7. Regional Project fund recovery**

With the exception of the discussion of reserves above, FORA policy has been that MCWD not spend any further operating or capital dollars on anything related to the former desalinization project. MCWD has complied with this request. As the District believes they will recover the costs spent for the regional project, the recovery funds will be allocated into the proper reserve accounts once received.

## **8. 218 Process**

A. There can only be one lead agency for the state mandated 218 process. FORA recognizes that MCWD is the Lead Agency. FORA does have an interest and desire that MCWD follow the letter of the 218 law, and that all rate payers have the opportunity to avail themselves of the rights granted to them under the law. MCWD hired a 218 attorney to provide legal guidance while conducting the 2014 Prop 218 process. The District has followed legal guidance through the entire Prop 218 process.