



MARINA COAST WATER DISTRICT

11 RESERVATION ROAD, MARINA, CA 93933-2099

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DIRECTORS

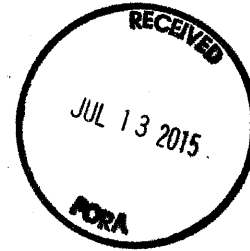
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July 13, 2015

Mr. Michael A. Houlemard, Jr., Executive Officer
Fort Ord Reuse Authority
920 – 2nd Avenue, Suite A
Marina, CA 93933



Re: Notice of Dispute under 1998 Water/Wastewater Facilities Agreement

Dear Mr. Houlemard: *Michael,*

Notice is hereby given that the Marina Coast Water District refers the limited issues set forth in your letter dated June 17, 2015 re: Response to Marina Coast Water District FY 2015-16 Proposed Ord Community Budget to dispute resolution. This is pursuant to Sections 7.1.3.3 and 10.1 of that certain 1998 Water/Wastewater Facilities Agreement (1998 Agreement).

Section 7.2.1 of the 1998 Agreement states as follows:

7.2.1. FORA shall 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.

In your June 17, 2015 letter, the "disputed elements" and the "detailed reasons for the dispute" appear to be as follows:

Disputed Element #1 - \$470,000 Capital Reserve line item (25b-2) for 10% design of the Regional Urban Water Augmentation Project (RUWAP) desalination project. "RUWAP desalination project planning needs to include all water augmentation options (recycled, conservation, other)."

Disputed Element #2 – 9% [water] rate increase for FY 2015/16. "[A] portion of the 9% rate increase **appears** to provide Ord Community funding for litigation related to the failed regional desalination project and/or further desalination planning outside of **current** FORA Board direction." [Emphasis added.]

In your letter, you specify the following as being acceptable to FORA to resolve FORA's dispute:

- #1 – Exclude desalination specific project line item 25b-2 and re-program RUWAP implementation to include conservation, recycled and other augmented options.
- #2 – Lower the “9% rate increase commensurate to MCWD regional desalination project/litigation expenses, which also are directed to be removed from the revised budget.”

Please be advised that MCWD Board has reviewed the above and has determined not to adopt FORA's proposed resolutions and hereby submits all of the above matters to dispute resolution in accordance with Section 10.1 of the 1998 Agreement.

Reserving the right to provide additional information relevant to this dispute, MCWD provides the following for FORA's information:

1. Disputed Element #1 - \$470,000 Capital Reserve line item (25b-2) for 10% design of the Regional Urban Water Augmentation Project (RUWAP) desalination project. The FOR A Board's statement was that the “RUWAP desalination project planning needs to include all water augmentation options (recycled, conservation, other).”

1.1. The June 17, 2015 letter fails to provide sufficient “detailed reasons for the dispute” of this element and, therefore, fails to comply with Section 7.2.1 of the 1998 Agreement.

1.2. In the FORA CIP for FY 2012/2013, FORA's position as stated in the last sentence in Section II.b on page 6 is that “MCWD is still contractually obligated to provide an augmented source for the former Fort Ord as distinct from the Regional [Desalination] Project.” MCWD recognizes that contractual obligation to FORA so MCWD has been pursuing recycled water, water conservation, and desalinated water augmentation options. FORA and MCWD have long recognized that recycled water, desalinated water, and water conservation are the legs of the three-legged stool needed to meet FORA's 2030 2,400 AFY augmentation water requirement.

1.3. As demonstration of the MCWD commitment to the integrated approach to water augmentation that FORA apparently failed to recognize is that the very budget in question already includes recycled water and water conservation projects and activities. Please note that this MCWD Ord Community FY 2015/16 budget submitted to FORA includes \$750,000 for CIP RW-0156, Recycled Water Trunk Main, and funding for an additional water conservation specialist position. It also includes funding for the 2015 Urban Water Management Plan update, which will reassess the long-term water demand projections for the Ord Community.

1.4. Two FORA member agencies, the City of Seaside and Monterey County, have published a draft Specific Plan for the Monterey Downs Project, which requires non-potable recycled water for all six phases and desalinated water for Phases IV to VI. The draft environment impact report for the project identified the RUWAP recycled water component and the RUWAP desalinated water component as the water sources providing that needed water. There are questions as to whether the Monterey Downs Project or any other new development dependent upon the additional 2,400 AFY in FORA Augmentation Water can be entitled without both RUWAP water projects being built.

1.5. The statement in FORA's June 17, 2015 letter that "RUWAP desalination project planning needs to include all water augmentation options (recycled, conservation, other)" is not a sufficient "detailed reason" to stop all RUWAP desalination project planning given FORA's statement as to MCWD's contractual obligation, MCWD's ongoing recycled water and water conservation activities (as included in this very budget), and the need to plan, finance, and construct RUWAP recycled and desalinated water sources for new developments within the Ord Community.

1.6. As part of or separate from the dispute resolution process, MCWD wishes to work with FORA to consider desalination, recycled water, conservation, and other water augmentation options so long as a determination can be made in a timely manner. If the FORA Board wishes to engage in a discussion of water augmentation issues separate and apart from this dispute resolution process, we are anxious to do so and ask that you please contact me. Toward that effort, I have already reached out to engage you in the discussions regarding reclaim negotiations with MCWPCA.

2. Disputed Element #2 – 9% [water] rate increase for FY 2015/16. "[A] portion of the 9% rate increase **appears** to provide Ord Community funding for litigation related to the failed regional desalination project and/or further desalination planning outside of **current** FORA Board direction." [Emphasis added.]

2.1. The June 17, 2015 letter fails to provide sufficient "detailed reasons for the dispute" of this element and, therefore, fails to comply with Section 7.2.1 of the 1998 Agreement.

2.2. New Water Rates Effective January 1, 2016: The 2015 calendar year water rates went into effect on January 1, 2015, and the proposed new water rates will not go into effect until January 1, 2016. MCWD's Proposed Compensation Plan for FY 2015-2016 for the Ord Community Water/Wastewater Systems contains the following statement on page 2, "In order to meet operating and capital needs of the Ord Community systems, this compensation plan includes residential rate increase of 9% for water and 4% for wastewater effective January 1, 2016." Therefore, any dispute regarding residential water rates in the Proposed Compensation Plan only applies to new residential rates effective January 1, 2016, and only to the extent of FORA providing "detailed reasons for the dispute," which it did not do.

2.3. Failed Regional Desalination Project Litigation Costs:

2.3.1. In 2002, MCWD with FORA's endorsement initiated the Regional Urban Water Augmentation Project (RUWAP) to explore water supply alternatives to provide the additional 2,400 AFY of water augmentation supply needed by FORA under the adopted Fort Ord Reuse Plan. Subsequently, FORA and MCWD agreed upon the development of the "Hybrid Alternative" consisting of a 1,500 AFY of recycled water (allocating 1,200 AFY to the Ord Community and 300 AFY to the Monterey Peninsula) and 1,500 AFY of desalination water (allocating 1,200 AFY to the Ord Community and 300 AFY to Central Marina).

2.3.2. The FORA Board had endorsed the Regional Desalination Project when the project agreements were entered into; therefore, pursuant to Section 7.1.2 of the 1998 Agreement, the current FORA Board cannot disallow litigation costs incurred to protect MCWD's rights under the RDP agreements. For example, the FORA Capital Improvement Program for FY 2012/13 through 2021/22, Section II.b, Water Augmentation (p. 6), states, "At the April 2008 FORA Board meeting, the Board endorsed the Regional Plan as the preferred plan to deliver the requisite 2,400 AFY of augmenting water to the 6,600 AFY groundwater entitlements." In April 2008, the Regional Plan included a 12,500 AFY desalination facility at North Marina being considered by the California Public Utilities Commission and Cal Am. That proposed project became the RDP. Nearly 90% of the Water to which MCWD was to be entitled by that project was dedicated to the Ord Community.

2.3.3. MCWD entered into that certain Water Purchase Agreement dated April 6, 2010 (WPA), and other agreements to develop the Regional Desalination Project. WPA Section 9.4(d) allocated 1,700 AFY of desalinated Product Water to MCWD "to satisfy MCWD customers' demand in MCWD's Service Area that cannot be satisfied by MCWD's Potable Groundwater Limits." "MCWD Service Area" was defined in Recital A as the "lands within the City of Marina and certain other areas within Monterey County, including lands on the former Fort Ord." "MCWD's Potable Groundwater Limits" was defined in Section 1.3 as "the limits for the withdrawal of water from the Salinas Basin imposed by law or agreement upon MCWD for the development of the former Fort Ord." Therefore, the WPA provided that the 1,700 AFY was to meet customers' demand in the Ord Community that could not be satisfied by the 6,600 AFY groundwater allocation under the 1993 Ord Annexation Agreement.

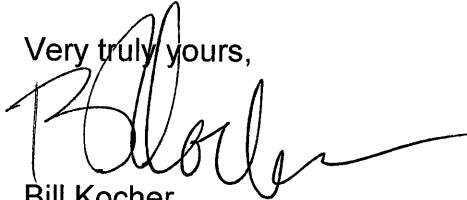
2.4. RUWAP Desalination Project Planning: See discussion under Section 1 above.

3. Pursuant to Section 7.1.2 of the 1998 Agreement, the FORA Board is required to allow MCWD to recover all of MCWD's direct and indirect, short term and long term costs of furnishing the facilities to the Ord Community, including the cost of administration, operation, maintenance, and capital improvements to provide adequate system capacity to meet existing and anticipated service demands.

4. The FORA Board failed to comply with all of the requirements of Section 7.2.1 of the 1998 Agreement within three months of the submittal of the proposed Compensation Plan to FORA and, therefore, the proposed Compensation Plan is deemed adopted by FORA.

The "date of the dispute" for purposes of Section 10.1.1 of the 1998 Agreement shall be the date you receive this Notice unless another date is mutually agreed upon.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bill Kocher", with a long horizontal flourish extending to the right.

Bill Kocher
Interim General Manager