



LandWatch
monterey county

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February 24, 2010

Board of Directors
Marina Coast Water District
11 Reservation Road
Marina, CA 93933

SUBJECT: RESOLUTION No. 2010-12 TO APPROVE A REIMBURSEMENT AGREEMENT WITH CALIFORNIA AMERICAN WATER COMPANY

Dear Members of the Board of Directors:

LandWatch Monterey County reviewed the proposed agreement which would approve reimbursement from California American Water Company (CAW) to Marina Coast Water District (MCWD) and Monterey County Water Resources Agency (MCWRA). CAW would pay MCWD and MCWRA for funds the water agencies spend from February 9, 2010 to December 31, 2010 or until financing for the Regional Project is available. CAW would provide up to \$4.3 million for specific tasks to MCWD. It is unclear how much the county would receive. The water districts would reimburse the funds by the end of 2010 or when financing becomes available for the Regional Plan.

LAFCO Consistency

We urge you to delay action on this item until you have obtained legal advice regarding consistency of the agreement with the following requirements of Government Code Section 56133 (e) related to local agency formation commissions:

(e) This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider. This section does not apply to contracts for the transfer of nonpotable or nontreated water. This section does not apply to contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water serviceto any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county. This section does not apply to an extended service that a city or district was providing on or before January 1, 2001. This section does not apply to a local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation

of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries. (Underline added)

It appears that CAW would not be included within any of the above categories provided in this section since it is not a political subdivision of the State. Further, it appears that MCWD would have to get prior approval of LAFCO before the contract is approved.

Insufficient Public Notice

LandWatch urges you to delay action on this item until the public is given more time to review the agreement. LandWatch feels 24 hours is insufficient for the public to read and understand such an important legal document. The proposed agreement is retroactive to Feb. 9th so it seems the agencies have been working on this issue for awhile and therefore could provide more public review.

Agreement Could Force Approval of Regional Project

Under this contract, the public agencies could be exposed to litigation from CAW if they do not approve of (or a component thereof) the Regional Project. IF MCWD or MCWRA deny the project, CAW could argue bad faith under paragraph six of the agreement. This agreement could therefore create an incentive for MCWD and MCWRA to approve the Regional Project.

CAW Ratepayers

CAW and ultimately its ratepayers have already shouldered a major share of costs for the Coastal Water Project including work on all three alternatives. Under the proposed agreement, CAW could forgive repayment of the loan thus underwriting a project that benefits non-CAW customers. Such an outcome would be unfair to CAW ratepayers.

Thank you for the opportunity to review this document and for your consideration.

Sincerely,



Amy S. White, Executive Director
LandWatch Monterey County