



**MINUTES**  
**of the Regular Meeting**  
**Monterey Regional Water Pollution Control Agency**  
**Board of Directors**  
**February 27, 2017**

**1. CALL TO ORDER**

The Regular Meeting of the Board of Directors of the Monterey Regional Water Pollution Control Agency was Called to Order by Chair Fischer at 6:17 p.m., on Monday, February 27, 2017 in the Board Room at 5 Harris Court, Building D, Monterey, California.

**2. ROLL CALL**

**BOARD MEMBERS PRESENT:**

Rudy Fischer, Chair	Pacific Grove
Ron Stefani, Vice Chair	Castroville Community Services District
Linda Grier	Boronda County Sanitation District
John M. Phillips	County of Monterey
Dennis Allion	Del Rey Oaks
Howard Gustafson ( <i>Alternate</i> )	Marina Coast Water District
Timothy Barrett	Monterey
James R. Cochran	Moss Landing County Sanitation District - Ex-Officio
Gloria De La Rosa	Salinas
Dave Pendergrass	Sand City
Ralph Rubio	Seaside
Vacant – Ex-Officio	United States Army

**BOARD MEMBERS ABSENT:**

None

**MRWPCA STAFF PRESENT:**

Paul A. Sciuto	General Manager
Tori Hannah	Chief Financial Officer
Bob Holden	Principal Engineer

**Minutes**  
**MRWPCA Regular Board Meeting**  
**February 27, 2017**  
**Page 2**

Rob Wellington	Legal Counsel
Bob Rathie	Assistant Legal Counsel
Mike McCullough	Government Affairs Administrator
Jennifer Gonzalez	Engineering Manager
Bill Kocher	PWM Program Manager
Tom Kouretas	Associate Engineer
Jarrold Levine	Operator III
Michelle Bumgardner	Customer Service Rep II
Chayito Ibarra	Executive Assistant

**OTHERS PRESENT:**

George Riley, Public Water Now  
Troy Bumgardner, Public Member  
Chris Duncan, Maggiora Bros Drilling  
Mike Maggiora, Maggiora Bros Drilling  
Alex Miller, Public Member

**3. PUBLIC COMMENTS**

Alexander Miller read the names of MRWPCA customers who had a lien placed on their property for failure to pay their MRWPCA bill.

**4. ELECTION OF BOARD OFFICERS**

Chair De La Rosa called on Mr. Pendergrass, Chair of the Nomination Committee, for his report. Mr. Pendergrass stated that he and the other committee members, Mr. Rubio and Mr. Moore, met on February 17 and nominated Member Fischer for Chair and Member Stefani for Vice Chair.

No additional nominations from the floor were received.

**ACTION TAKEN:** It was moved by Member Gustafson, seconded by Member Barrett, to approve the nomination of Member Fischer as Chair and Member Stefani as Vice Chair for 2017, and carried by the following vote:

**Ayes:** Fischer, Stefani, Grier, Phillips, Allion, Gustafson, Barrett, De La Rosa, Pendergrass, Rubio

**Noes:** None

**Absent:** None

**5. SPECIAL ACKNOWLEDGEMENTS**

A. Approve Resolution 2017-09, Resolution of Appreciation Presented to Outgoing Chair De La Rosa

Chair Fischer presented a resolution of appreciation to outgoing Chair De La Rosa for her service as MRWPCA Board Chair for the last two years.

**ACTION TAKEN:** It was moved by Member Gustafson, seconded by Member Phillips, to approve Resolution 2017-09, a Resolution of Appreciation to Outgoing Chair De La Rosa, and carried by the following vote:

**Ayes:** Fischer, Stefani, Grier, Phillips, Allion, Gustafson, Barrett, De La Rosa, Pendergrass, Rubio

**Noes:** None

**Absent:** None

**6. CONSENT AGENDA**

Mr. Barrett requested to pull Item 6-E from the consent agenda.

**ACTION TAKEN:** It was moved by Member De La Rosa, seconded by Member Rubio, to approve Consent Agenda Items A through D and Items F through J, and carried by the following vote:

**Ayes:** Fischer, Stefani, Grier, Phillips, Allion, Gustafson, Barrett, De La Rosa, Pendergrass, Rubio

**Noes:** None

**Absent:** None

- A. Consider Approval of Board Minutes for Regular Board Meeting of January 30, 2017
- B. Receive Schedule of Cash and Investments as of January 31, 2017
- C. Receive Check Register for January 2017
- D. Receive NPDES Monitoring Report for January 2017; and Plant Flows and Effluent Quality for Connected Agencies, Plus Flow Charts for RTP, Salinas, Monterey Peninsula, Marina, Fort Ord, and Castroville for January 2017
- F. Consider Awarding Phase 2 Design of the Pure Water Monterey Groundwater Replenishment Project Injection Wells Facilities to Kennedy/Jenks Consultants
- G. Consider Approval of Easement Deed and Agreement for Grant/Purchase of Easement Between MRWPCA and MRWMD for Blanco Drain Diversion Facility Easements on MRWMD Property
- H. Consider Approval of Easement Deed and Agreement for Grant/Purchase of Easement Between MRWPCA and Thomas M. Bunn Family, LLC for Blanco

Drain Diversion Facility Easements on Bunn Property

- I. Consider Approval of an Amendment to the Existing Contract with Wigen Water Technologies for the Advanced Water Treatment Facility Membrane Filtration Reverse Osmosis Equipment (MF/RO)
- J. Approve Resolution No. 2017-10, Amending Resolution No. 2014-26, Authorizing the Signing of the Checks and Other Instruments at Bank of the West

**ITEMS PULLED FROM CONSENT AGENDA:**

- E. Consider Entering into an Agreement with V.W. Housen & Associates for Conducting a Focused Wastewater Service Area Study and Approving a Memorandum of Understanding with the County of Monterey for the Reimbursement of Expenses Related to the Study

Mr. Barrett stated that with regard to this item, not enough information is included in the staff report for him to make an informed decision. He requested that in the future more information be included in the staff report that states how many proposals were received, background on the awardee and the competitors, and why the awardee is more qualified than the others. Mr. Sciuto in answering Member Barrett stated that this item is for an engineering contract for professional services which is based on qualifications instead of a low bid selection. Mr. Sciuto answered Mr. Barrett's questions with regard to who the selection panel was comprised of and brief background on V.W. Housen & Associates. Mr. Barrett stated that he would appreciate this level of information in future agenda staff reports.

**ACTION TAKEN:** It was moved by Member Gustafson, seconded by Member Rubio, to approve Consent Agenda Items E, and carried by the following vote:

**Ayes:** Fischer, Stefani, Grier, Phillips, Allion, Gustafson, Barrett, De La Rosa, Pendergrass, Rubio

**Noes:** None

**Absent:** None

**7. COMMITTEE REPORTS**

- A. BUDGET/PERSONNEL COMMITTEE (BPC) – FEBRUARY 10, 2017
  - 1. Receive BPC Draft Minutes of February 10, 2017

**ACTION TAKEN:** It was moved by Member Rubio, seconded by Member De La Rosa, to receive the BPC Draft Minutes of February 10, 2017 and carried by the following vote:

**Ayes:** Fischer, Stefani, Grier, Phillips, Allion, Gustafson, Barrett, De La Rosa, Pendergrass, Rubio

**Noes:** None

**Absent:** None

**B. RECYCLED WATER COMMITTEE (RWC) – FEBRUARY 16, 2017**

1. Receive RWC Draft Minutes of February 16, 2017

**ACTION TAKEN:** It was moved by Member Rubio, seconded by Member De La Rosa, to receive the RWC Draft Minutes of February 16, 2017, and carried by the following vote:

**Ayes:** Fischer, Stefani, Grier, Phillips, Allion, Gustafson, Barrett, De La Rosa, Pendergrass, Rubio

**Noes:** None

**Absent:** None

**8. ACTION ITEMS**

**A. Receive Preliminary Mid-Year Budget Report**

Ms. Hannah provided the Board with a presentation which included updated preliminary mid-year budget figures and a review of estimated reserve levels.

Ms. Gonzalez provided the Board with a presentation on the Capital Improvement Projects mid-year budget report.

Member Allion asked how fast staff can start working on some of these projects once the SRF loan is received. Ms. Gonzalez stated that she will be re-budgeting many of these projects for next fiscal year and engineering staff is currently reviewing them to put them in priority order.

**ACTION TAKEN:** It was moved by Member Gustafson, seconded by Member Allion, to receive the preliminary Mid-Year Budget Report, and carried by the following vote:

**Ayes:** Fischer, Stefani, Grier, Phillips, Allion, Gustafson, Barrett, De La Rosa, Pendergrass, Rubio

**Noes:** None

**Absent:** None

**Minutes**

**MRWPCA Regular Board Meeting**

**February 27, 2017**

**Page 6**

**B. Receive Additional Rate Study Information and Provide Direction to Staff on Prop 218 Hearing Materials and Updated Reserve Policy**

Ms. Hannah introduced Alex Handlers, Vice President/Principal, from Bartle Wells Associates who provided a review of finances, CIP and fund reserve target, cash flow projections, financial scenarios, and potential rate increases.

Ms. Hannah stated that staff would like the Board to provide guidance on the rate increase they would like to implement as well as on updating the reserve policy.

A lengthy discussion was had from the Board regarding the aging facilities and the projected 10-year CIP which is estimated to be \$10 million per year. It was the consensus of the Board that staff and the BPC review the presentation information and adjust the Agency's Reserve Policy based on recommendations made at the March BPC Meeting for consideration by the Board at the March Board meeting.

With regard to rate increases, Mr. Handlers presented four sample rate models, with scenarios demonstrating different rates and the amounts available to fund the CIP. After lengthy discussion, it was the consensus of the Board that the Budget and Personnel Committee further evaluate Scenarios C and D. Scenario C includes increases of \$1.27 to \$1.48 a month over a three year period, with a combined three-year increase of \$4.12. This scenario would increase CIP to \$5.7 million in Year 3 and include debt-financing in future years to meet CIP funding levels. Scenario D includes increases of \$1.90 to \$2.39 a month over a three year period, with a combined three-year increase of \$6.42. This scenario would increase CIP to \$8.9 million in Year 3 without debt financing and facilitate a lower rate of increases in future years.

Mr. Sciuto added that additional public outreach is needed to inform the community on what the rate increase will be spent on.

**Public Comments:**

George Riley stated that with regard to rate increases and CIP funding, he thinks going with Scenario D is best for the Agency.

**ACTION TAKEN: It was moved by Member Barrett, seconded by Member Rubio, to receive the rate study information and direct staff and the BPC to further evaluate scenarios C and D, prepare Proposition 218 hearing materials, and prepare an updated Reserve Policy for consideration by the BPC at their March meeting, for recommendation to the Board at the March 27 Board meeting, and carried by the following vote:**

**Ayes: Fischer, Stefani, Grier, Phillips, Allion, Gustafson, Barrett, De La Rosa, Pendergrass, Rubio**

**Noes: None**

**Absent: None**

C. Consider Authorizing the General Manager to Enter into a Reimbursement Agreement with the City of Monterey Toward the Development of a Stormwater Resource Plan

Mr. McCullough presented this item and stated that the MRWPCA was awarded a Prop 1 Planning Grant in the amount of \$358,716. He noted that the grant included a 50% local match requirement; the \$358,716 grant represents 50% of an overall planning effort in the amount of \$717,432. The 50% local match is made up of past and future staff time and \$170,000 in funds put forth by the City of Monterey and \$85,000 from a grant they received from the Monterey Peninsula Water Management District.

Mr. McCullough stated that a reimbursement agreement is now needed in order to obtain the \$170,000 local match from the City of Monterey to support the planning efforts.

**ACTION TAKEN: It was moved by Member Barrett, seconded by Member Gustafson, to authorize the General Manager to enter into a Reimbursement Agreement with the City of Monterey toward the development of a Stormwater Resource Plan, and carried by the following vote:**

**Ayes: Fischer, Stefani, Grier, Phillips, Allion, Gustafson, Barrett, De La Rosa, Pendergrass, Rubio**

**Noes: None**

**Absent: None**

D. Consider Amending Resolution No. 2015-21, A Resolution in Support of Pledged Revenues and Funds for Repayment of Financing of the Planning, Design, and Construction of the Pure Water Monterey Groundwater Replenishment Project

Ms. Hannah stated that the SWRCB is requesting that the Agency again amend Resolution 2015-21 to dedicate the Net Revenues of the Agency and the Wastewater Enterprise and Pure Water Monterey Enterprise Funds. This request was primarily due to the State expressing concern over referencing a repayment source that did not have any history. Although the Agency has submitted pro-forma financial statements and agreements to demonstrate that the Pure Water Monterey Fund will be self-supporting; and meet the State's debt covenant requirements, the State is not willing to move forward with the loan without this added assurance. While this action will not have any impact on the Agency's wastewater revenues, it is anticipated that it will reduce the Agency's debt coverage ratio from approximately 2.14x to be approximately 1.75x,

**Minutes**  
**MRWPCA Regular Board Meeting**  
**February 27, 2017**  
**Page 8**

depending on the final loan amount. This ratio is still above the Agency's debt coverage requirement of 1.25x.

**ACTION TAKEN:** It was moved by Member Gustafson, seconded by Member Phillips, to approve amending Resolution No. 2015-21, a resolution in support of pledged revenues and funds for repayment of financing of the planning, design and construction of the Pure Water Monterey Groundwater Replenishment Project, to reflect comments received from the State Water Resources Control Board, and carried by the following vote:

**Ayes:** Fischer, Stefani, Grier, Phillips, Allion, Gustafson, Barrett, De La Rosa, Pendergrass, Rubio

**Noes:** None

**Absent:** None

- E. Consider Rejecting the Bid Protest of Maggiora Brothers Drilling and Finding the Bid of Maggiora Brothers Drilling to be Non-Responsive; Waiving Inconsequential Defects in the Bid of Zim Industries and Finding Zim Industries to be the Lowest Responsive and Responsible Bidder; and, on that Basis, Recommending Award of Contract for the Construction of Pure Water Monterey Groundwater Replenishment Project Injection Wells Facilities, Phase 1, to Zim Industries

Mr. Sciuto stated that this item has become more complex due to receipt of recent information from the State Water Resources Control Board which has the potential to detrimentally affect the Agency's ability to secure funding for the Project from the State of California under a financial assistance agreement. Mr. Sciuto introduced Ms. Hamilton, Injection Wells Project Manager, who would be providing the background on this item.

Ms. Hamilton introduced this item and provided the background on the bids received for this project. She added that state law and the contract documents require that this project be awarded to the lowest responsive and responsible bidder. She explained that a bid is "responsive" if it does what the bidding instructions demand; a bidder is "responsible" if it can perform the contract as promised.

Ms. Hamilton explained that following opening bids the Maggiora Bros. Drilling bid was determined to contain an anomaly with reference to the price of Maggiora's bid. Maggiora submitted a bid in two different formats and amounts: \$1,492,918 submitted as a pdf uploaded into the Procore system and \$1,477,917.80 input electronically and calculated through Procore's software. She explained that the difference of \$15,000 was the result of Maggiora having omitted to include an amount for Item D.2 in the electronically completed bid



**Minutes**  
**MRWPCA Regular Board Meeting**  
**February 27, 2017**  
**Page 9**

form, which amount was included in the pdf version of the bid. On February 7, 2017, Maggiora was notified by email that the Agency had determined Maggiora was not the low bidder and that its bid omitted Item D.2.

On February 21, 2017 the Agency received a bid protest from Maggiora. Ms. Hamilton explained that the contract documents provide that any bid protest must be submitted in writing no later than 5:00 pm on the fifth business day after the bid opening date. The fifth business day was February 14, and Maggiora's protest letter was received on February 21, 2017 and should be rejected as a late-filed protest and not in accordance with the direction provided by the contract documents concerning bid protests.

Ms. Hamilton added that Maggiora's letter also lodged a protest to the bid of Zim Industries alleging that Zim Industries did not provide documentation demonstrating compliance with local hiring requirements as required by the contract documents. In this letter, Maggiora offers to provide Item D.2 to the Agency at no cost. Ms. Hamilton stated that because Maggiora's error in omitting Item D.2 made its bid materially different than it intended it to be and the error affected the amount of Maggiora's bid, it provided Maggiora with an advantage not afforded any other bidder. Maggiora's error is therefore consequential and the Agency is without legal power or authority to waive the error and accept Maggiora's bid.

With regard to the Bid of Zim Industries, Ms. Hamilton explained that Zim Industries submitted its bid for the project on February 7, 2017, in the amount of \$1,487,968.00. Upon review of the bids, Staff discovered that Zim Industries failed to acknowledge receipt of Addendum No. 4 to Contract Documents with its bid and omitted Form 4500-3 "DBE Subcontractor Performance Form" from its bid.

Addendum No. 4 made several text changes to the Contract Documents and provided a clarification (not a change) to the scope of work with reference to the erosion control plan. None of the changes or the clarification affected the price of Zim's bid nor did the omission of acknowledgment of receipt of Addendum No. 4 provide Zim with an advantage over any other bidder. Therefore Zim's failure to acknowledge receipt of Addendum No. 4 is an inconsequential defect and within the authority of the Board to waive.

Form 4500-3 is in furtherance of the good faith efforts required for this state-funded project to increase the participation of Disadvantaged Business Enterprises (DBE) in the work. Zim's failure to include this form with its bid is an inconsequential defect, within the authority of the Board to waive as it neither affected the bid price nor provided an advantage to Zim over any other bidder. Zim's bid provides for utilization of two DBE suppliers and includes detailed evidence of Zim's good faith efforts to utilize DBEs.

Upon receipt of Maggiora's protest on February 21, 2017, Staff further reviewed Zim's bid and determined that Zim's Responsible Managing Officer/Secretary executed and submitted with Zim's bid the required form, in accordance with the instructions in the Contract Documents, certifying, under penalty of perjury, Zim's good faith effort to hire Monterey Bay area residents, and therefore the question raised in Maggiora's protest with reference to compliance with the local hiring requirements for the project should be resolved in favor of Zim.

Mr. Sciuto explained that as a result of information received this afternoon from the State Water Resources Control Board to staff's inquiry regarding the failure of the apparent low bidder, Zim Industries, to submit a form titled "DBE Subcontractors Performance Form" with its bid staff would like to change staff's recommendation on this item. In its initial response, the State indicates that failure to include the form is not a waivable deviation. However, staff would like to discuss this issue further with the State before recommending that Zim be found non-responsive, due to the need to have the work done in Spring 2017, delaying action on this item until the March 27, 2017 Board meeting would be detrimental to the project. Mr. Sciuto stated that staff is requesting that the Board consider the following action on this item:

That the Board authorize and delegate the authority to the General Manager to award the contract to Zim Industries, if it is determined that Zim's bid is responsive or to reject all bids on the Pure Water Monterey Groundwater Replenishment Project Injection Wells Facilities, Phase 1 and rebid the Project. Staff further recommends that the Board reject Maggiora Bros Drilling bid protest as untimely and without merit and find the bid of Maggiora Bros. to be non-responsive.

The Board had a lengthy discussion regarding each of the bids received and the local hiring ordinance and whether Zim Industries made a good faith effort to hire locally.

**Public Comments:**

Mike Maggiora, Maggiora Bros. Drilling, provided comments on the error they made on the bid documents submitted and clarified the reason their protest letter was submitted late. He stated that Maggiora Bros Drilling has been in business for 55 years and hires local employees and asked the Board to reconsider the rejection of their bid.

Jim Riley, Union Representative for Local 3, spoke in support of awarding the bid to Maggiora Bros. Drilling as 100% of their employees reside in Monterey, San Benito or Santa Cruz Counties. He noted that Maggiora Bros. Drilling pays their employees over prevailing wage. He asked the Board to reconsider the rejection of their bid.

After a very lengthy discussion from the Board, it was the consensus of the Board to reject all bids received and directed staff to rebid the project. The Board placed an emphasis on the local hiring aspect with regard to this project.

**ACTION TAKEN:** It was moved by Member Rubio, seconded by Member Barrett, to reject all bids received and rebid the project, and carried by the following vote:

**Ayes:** Fischer, Stefani, Grier, Phillips, Allion, Gustafson, Barrett, De La Rosa, Pendergrass, Rubio

**Noes:** None

**Absent:** None

F. Consider Approval of Payment of the Remaining 2006 Bond Balance Contingent Upon Notification of Approval of the State Revolving Fund Loan Initial Funding Agreement

Ms. Hannah explained that at the January Board Meeting, the Agency approved Supplements to the 2012 and 2013 bond documents to eliminate the reserve requirement related to the new SRF loan; however this option was not available for the 2006 Bonds. She stated that in order to allow the Agency to retain the use of the SRF loan proceeds until the prior year costs are fully reimbursed and construction is complete, the Agency could retire the 2006 Bonds. This would include initiating an early payment of the current portion of debt service that is included in the Fiscal Year 16/17 Budget; and next year's principal payment of \$975,000. This is estimated to result in interest savings of at least \$48,750. She added that Staff would not defease this loan early, if the Agency did not receive confirmation from SRF regarding the loan status. In addition, staff would also request an extension on the \$2 million line of credit, if the reimbursement process is delayed.

**ACTION TAKEN:** It was moved by Member Allion, seconded by Member De La Rosa, to approve paying the remaining 2006 Bond Balance, contingent upon notification of approval of the State Revolving Fund loan initial funding agreement, and approve the associated budget amendment, and carried by the following vote:

**Ayes:** Fischer, Stefani, Grier, Phillips, Allion, Gustafson, Barrett, De La Rosa, Pendergrass, Rubio

**Noes:** None

**Absent:** None

**Minutes**

**MRWPCA Regular Board Meeting**

**February 27, 2017**

**Page 12**

**G. Consider Approval of a Debt Management Policy**

Ms. Hannah stated that the proposed Debt Management Policy is being provided for consideration to comply with the state law (SB 1029) as it relates to debt issuance requirements. In addition, the Policy has been requested by the California Water Resources Control Board as part of the State Revolving Fund Loan process for Pure Water Monterey.

**ACTION TAKEN: It was moved by Member Pendergrass, seconded by Member Phillips, to approve the MRWPCA Debt Management Policy, and carried by the following vote:**

**Ayes: Fischer, Stefani, Grier, Phillips, Allion, Gustafson, Barrett, De La Rosa, Pendergrass, Rubio**

**Noes: None**

**Absent: None**

**9. INFORMATIONAL ITEMS**

**A. Reclamation Highlights/Charts, Water Quality & Ops, Tours**

Mr. Sciuto provided a summary of these items to the Board.

**B. Pure Water Monterey Update**

Mr. Kocher provided an update on the Pure Water Monterey Project and reviewed some of the highlights.

**10. STAFF REPORTS**

**A. General Manager/Assistant General Manager/Legal Counsel**

Mr. Sciuto provided an update to the Board on presentations he has made in the community and meetings he has attended.

**11. BOARD MEMBER COMMENTS/REPORTS**

Mr. Barrett stated that in looking over the check register he noticed payments that are made to PG&E and Solar City and would like to get a report on the amount of energy the Agency produces and purchases. After some discussion, Mr. Barrett stated that he would talk to Mr. Sciuto separately about this.

Chair Fischer recessed Open Session and commenced Closed Session at 9:00 p.m.

**12. RECESS TO CLOSED SESSION**

**A. Conference with Real Property Negotiators**

*Pursuant to Government Code 54956.8*

**Minutes**  
**MRWPCA Regular Board Meeting**  
**February 27, 2017**  
**Page 13**

Property: Ocean Outfall  
Agency Negotiator: Paul A. Sciuto, General Manager  
Negotiating Parties: California American Water  
Under Negotiation: All Terms and Conditions


Chair Fischer adjourned Closed Session at 9:05 p.m., and commenced Open Session.

**13. ANNOUNCEMENTS FROM CLOSED SESSION**

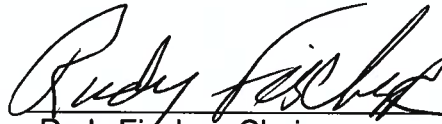
Legal Counsel Wellington reported that in the Closed Session the Board considered Agenda Item 12-A (Conference with Real Property Negotiators) and stated that no reportable action was taken.

**14. ADJOURNMENT**

At 9:06 p.m. with no further business, Chair Fischer adjourned the meeting to the next regularly scheduled Board Meeting to be held in the Board Room at 5 Harris Court, Building D, in Monterey, California on Monday March 27, 2017 at 6:00 p.m.



Paul A. Sciuto, General Manager  
Secretary to the Board



Rudy Fischer, Chair  
MRWPCA Board of Directors