

MCWD – Water and Wastewater Facilities Agreement Dispute Resolution – Update

Presentation to FORA Board

September 11, 2015

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Assistant Executive Officer*

- i. Timeline
- ii. FORA Authority to Disagree with Budget
- iii. FORA-MCWD Facilities Agreement Provisions
- iv. Resolution Concerns

Timeline



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2		█													
3			█												
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	1994	1998	2001	3/17/15	4/29/15	6/12/15	6/17/15	7/13/15	7/20/15	7/30/15	8/04/15	8/05/15	8/10/15	9/02/15	9/11/15

1. FORA established
2. Facilities Agreement signed
3. Facilities Agreement amended
4. MCWD 2015/16 budget sent to WWOC (3-17-15)
5. WWOC recommends Board approve MCWD Budget
6. FORA Board disagrees with budget: 2 disputed elements
7. FORA disputes budget elements with letter
8. MCWD invokes dispute resolution with letter
9. FORA EO and MCWD GM meet and confer
10. FORA EO proposes dispute resolution with letter
11. MCWD GM accepts dispute resolution proposal with letter
12. Executive Committee directs EO to respond
13. EO confirms dispute resolution
14. Executive Committee reviews item & adds closed session item
15. Board meeting info./action

- Is it within FORA's authority to disagree with elements of MCWD's Ord Community Budget?
- Yes. FORA has authority to dispute budget items within the allotted time, providing it offers reasoning and resolution.

Section 7.2.1 allows FORA to **disagree** with MCWD FY 2015/16 Ord Community Budget based on the following findings:

- 1) **identify disputed elements**
- 2) **state reasons for dispute**
- 3) **specify a resolution acceptable to FORA**

7.2. FORA RESPONSIBILITIES.

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.

Section 10.1 provides for 3 dispute resolution periods of 10 days each:

- 1) Executive Officer (EO) and General Manager (GM) meet and confer**
- 2) EO and GM with Water/Wastewater Oversight Committee meet and confer**
- 3) EO + Voting Board member and GM + Board member meet and confer**
- 4) If unresolved, the Parties go to mediation**

Section 10.1



10.1. DISPUTE RESOLUTION PROCEDURE.

10.1.1. Meet and Confer; Mediation. This section shall apply to all disputes arising under this Agreement. The Agreement Administrators designated under section 5.4 of this Agreement shall first meet and confer to resolve any dispute. Each party shall make all reasonable efforts to provide to the other party all information relevant to the dispute. If the Agreement Administrators cannot resolve the dispute within ten working days from the date of the dispute, they shall meet and confer together with the Committee. If the dispute is not resolved within another ten working days from the date of the dispute, the Agreement Administrators shall meet and confer together with a voting member of the FORA Board and a member of the MCWD Board. If the dispute is not resolved within another ten days from the date of the dispute, the parties shall mediate the dispute at the earliest possible date, with one of the persons named on Exhibit "C" to this Agreement serving as mediator. If the dispute is still not resolved, the parties may pursue any and all remedies available to them at law and equity, including declaratory relief which shall be binding on the parties.

- Concern: the dispute resolution did not receive Board approval
- Response: Facilities Agreement empowers the MCWD General Manager and FORA Executive Officer to resolve the dispute

- Concern: MCWD can proceed with planning its RUWAP desalination plant in a way that negatively impacts CalAm's proposed desalination plant
- Response: Should MCWD do so, the FORA Board can restrict future budget allocations to MCWD's desalination plant planning