

RESOLUTION NO. 4163

A RESOLUTION OF THE CITY OF PERRIS, CALIFORNIA, DECLARING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE ACQUISITION OF ASSETS OF McCANNA RANCH WATER COMPANY, INCLUDING, BUT NOT LIMITED TO, ASSESSOR'S PARCEL NOS. 303-370-003-1, 308-233-034-0, 308-323-058-0, 303-443-043-2

WHEREAS, for the public purposes set forth herein, the City of Perris, California is authorized to acquire property through the exercise of eminent domain pursuant to Section 19 of Article 1 of the California Constitution, California Code of Civil Procedure Sections 1240.010 through 1240.050 and Sections 1240.610 and 1240.650, and Government Code Sections 37350, 37350.5, 37351 and 40404; and

WHEREAS, the "Project" for the purposes of this resolution consists of the expansion of the City's existing water utility through the acquisition of the assets of a private water company, McCanna Ranch Water Company ("MRWC"), operating in the City; and

WHEREAS, in order to carry out and make effective the principal purpose of the Project, it is necessary for the City of Perris to acquire certain real property, water rights and other property located in the City of Perris, including but not limited to the fee simple interests in Assessor's Parcel Nos. 303-370-003-1, 308-233-034-0, 308-323-058-0, and 303-443-043-2, which are located in the City of Perris and are more particularly described in Exhibits "A," "B" and "C" which are incorporated by this reference (collectively, the "Property"); and

WHEREAS, the City has engaged in negotiations with MRWC and MRWC has waived the requirement that the City make a written offer to purchase the Property which includes a summary of the basis for the appraisal of the Property; and

WHEREAS, MRWC has waived notice of the hearing on this Resolution authorizing the City to exercise the power of eminent domain to acquire the Property, which notice would have advised MRWC of its right to be heard on the matters referred to in this Resolution and the date, time and place of the hearing on this Resolution; and

WHEREAS, the hearing on this Resolution was held on November 25, 2008 at 6:00 p.m. in the City Council Chambers of the City of Perris, located at located at 101 North "D"

Street, Perris, California 92570, and all interested parties were given an opportunity to be heard on the following matters:

- (a) Whether the public interest and necessity require the Project;
- (b) Whether the Project is planned or located in the manner that is most compatible with the greatest public good and the least private injury;
- (c) Whether Property proposed to be acquired is necessary for the Project; and
- (d) Whether an offer meeting the requirements of Section 7267.2 of the Government Code has been made to the owner or owners of record.

WHEREAS, the City Council, as a result of such hearing, has determined that public health, safety, and welfare require the City to acquire the fee and easement interests in portions of the Property for the stated purposes.

NOW THEREFORE, BE IT RESOLVED, that the City Council, hereby does find, determine, and declare based upon evidence presented to it as follows:

Section 1. The facts and conclusions referenced in this Resolution, and the findings made by the City Council herein, are supported by substantial evidence contained in the record of this proceeding, including, but not limited to, the Agenda Submittal regarding this Resolution.

Section 2. The Property to be acquired consists of the fee simple interest in real property, water rights and other property as described in Exhibits “A,” “B” and “C” attached hereto and incorporated herein by this reference.

Section 3. That the public interest and necessity require the acquisition of the Property by the City. The City currently has a municipal water system that serves approximately 3000 customers in and around the downtown area. At present, the City’s water system purchases all of its water through EMWD, which is also the water provider to the rest of the City. In order to ensure that water service is affordable for all City residents, the City does not charge its customers rates high enough to generate profits from which the City could pay for maintenance to the City’s water system. As a result, there is now deferred maintenance on the City’s water system. Subject to amendments to State Water Resources Control Board Application No. 30503

Barratt American, as more particularly described in Exhibit “C” attached hereto and incorporated herein by this reference, purchasing the assets of MRWC will enable the City to reduce its overall wholesale water costs. With the reduction in water costs, the City would be able to continue to provide competitive water rates to customers of the City’s water system and would have additional funds available for maintenance of the City’s water system.

Section 4. The Project is planned and located in a manner which will be the most compatible with the greatest public good and the least private injury in that, at present, the only domestic water providers in the City are the City, Eastern Municipal Water District (“EMWD”) and MRWC. Because the EMWD facilities in the City are operated by a public agency that serves an area larger than just the City, acquisition by the City of EMWD’s system is not a realistic alternative. Therefore, acquisition of MRWC’s assets is the City’s only option for obtaining the above-described benefits of acquiring water rights and enlarging the service area of the City’s existing water utility.

Section 5. The Property to be acquired is necessary for the Project because the objectives of the Project cannot be achieved without the acquisition of such Property and no other similar property is reasonably available for acquisition.

Section 6. The requirements of Government Code Section 7267.2 that a written offer to purchase the property be made and that such offer be accompanied by a summary of the basis for the appraisal on which the offer is based has been waived by MRWC in light of the extensive negotiations regarding acquisition of the Property that have taken place.

Section 7. The Property to be acquired is property appropriated to a public use. The City Council hereby finds that the public use for which the City is acquiring the Property is a more necessary public use as contemplated by Code of Civil Procedure §§ 1240.610 and 1240.650.

Section 8. The City hereby declares its intent to acquire the Property described in Exhibits “A,” “B” and “C” in the City’s name in accordance with the provisions of the laws of the State of California and finds that all conditions, statutory requirements and prerequisites to

the exercise of eminent domain to acquire the Property described herein have been complied with by the City.

Section 9. The law firm of Aleshire & Wynder, LLP, is hereby authorized and directed to prepare, institute, and prosecute in the name of the City such proceedings, in the Court having proper jurisdiction thereof, as may be necessary for the acquisition of the Property in accordance with the provisions of the California Eminent Domain Law and the Constitution of California. Said counsel are also authorized and directed to obtain any necessary order of the Court granting the City the right of immediate possession of the Property.

PASSED, APPROVED and ADOPTED at a regular meeting of the City Council of the City of Perris this 25th day of November 2008.

DARYL R. BUSCH
MAYOR OF THE CITY OF PERRIS

ATTEST:

JUDY L. HAUGHNEY
CITY CLERK

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY TO BE ACQUIRED FROM MRWC

PARCEL 1 [APN 303-370-003-1]:

LOT 17 OF TRACT NO. 22831, AS SHOWN BY MAP ON FILE IN BOOK 244 PAGES 77 THROUGH 89 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING AND RESERVING TO THE STATE ALL OIL, OIL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS AND OTHER HYDROCARBON, BY WHATSOEVER NAME KNOWN, AND ALL OTHER MINERALS AND MINERAL RIGHTS, WHETHER OR NOT SIMILAR TO THOSE HEREIN MENTIONED WITHOUT THE RIGHT OF SURFACE ENTRY.

PARCEL 2 [APN 308-233-034-0]:

LOT g OF TRACT NO. 22836, AS SHOWN BY MAP ON FILE IN BOOK 245 PAGES 5 THROUGH 10 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING AND RESERVING TO THE STATE ALL OIL, OIL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS AND OTHER HYDROCARBON, BY WHATSOEVER NAME KNOWN, AND ALL OTHER MINERALS AND MINERAL RIGHTS, WHETHER OR NOT SIMILAR TO THOSE HEREIN MENTIONED WITHOUT THE RIGHT OF SURFACE ENTRY.

PARCEL 3 [APN 308-323-058-0]:

LOT H OF TRACT NO. 22838, AS SHOWN BY MAP ON FILE IN BOOK 291 PAGES 34 THROUGH 39 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING AND RESERVING TO THE STATE ALL OIL, OIL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS AND OTHER HYDROCARBON, BY WHATSOEVER NAME KNOWN, AND ALL OTHER MINERALS AND MINERAL RIGHTS, WHETHER OR NOT SIMILAR TO THOSE HEREIN MENTIONED WITHOUT THE RIGHT OF SURFACE ENTRY.

PARCEL 4 [APN 303-443-043-2]:

LOT G OF TRACT NO. 22841, AS SHOWN BY MAP ON FILE IN BOOK 322 PAGES 68 THROUGH 73 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING AND RESERVING TO THE STATE ALL OIL, OIL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS AND OTHER HYDROCARBON, BY WHATSOEVER NAME

KNOWN, AND ALL OTHER MINERALS AND MINERAL RIGHTS, WHETHER OR NOT SIMILAR TO THOSE HEREIN MENTIONED WITHOUT THE RIGHT OF SURFACE ENTRY.

EXHIBIT "B"

DESCRIPTION AND SUMMARY OF ASSETS OF MRWC PREPARED BY STETSION
ENGINEERS, INC.

[To Be Inserted behind this page – Currently on file in the City Clerk's office.]

EXHIBIT "C"

DESCRIPTION OF WATER RIGHTS

1. Riparian and overlying water rights in underground stream recognized by the State Water Resources Control Board Subterranean Stream Determination for Application No. 30503 Barratt American issued on April 20, 2006, subject to (a) Agreement re Riparian and Overlying Water Rights Between Landowner and Water Public Utility; Declaration of Restrictions recorded in the Official Record of the County of Riverside on February 11, 2003 as Document No. 2003-099188, and (b) Grant Deed Water Right on Conditions recorded in the Official Records of the County of Riverside on February 11, 2003 as Document No. 2003-099189
2. All water rights in a subterranean stream pursuant to the Subterranean Stream Determination for Application No. 30503 Barratt American issued by the State Water Resources Control Board on April 20, 2006
3. The right to appropriate up to 1,000 acre feet of foreign water per year from the underground stream referenced in item 2 above, said rights to foreign water being the subject of an amendment to Application No. 30503 Barratt American sought pursuant to a Motion for an order Based on Material Facts Not In Dispute filed with the State Water Resources Control Board on September 30, 2008
4. The right to appropriate an additional 1,000 acre feet of foreign water per year from the underground stream referenced in item 2 above, said rights to foreign water being the subject of a further amendment to Application No. 30503 Barratt American yet to be filed

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PERRIS)

I, JUDY L. HAUGHNEY, City Clerk of the City of Perris, California, do hereby certify that Resolution No. 4163 was adopted by the City Council of the City of Perris at a regular meeting held on the 25th day of November 2008, and that the same was adopted by the following vote:

AYES:	COUNCILMEMBERS:	Motte, Rogers, Yarbrough, Landers, Busch
NOES:	COUNCILMEMBERS:	None
ABSENT:	COUNCILMEMBERS:	None
ABSTAIN:	COUNCILMEMBERS:	None

JUDY L. HAUGHNEY
CITY CLERK