

FINAL MINUTES
Special Meeting/Workshop
Board of Directors
Monterey Peninsula Water Management District
March 28, 2012

CALL TO ORDER/ROLL CALL

The meeting was called to order at 7:05 pm in the District conference room.

Directors Present:

David Potter -- Chairperson , Monterey County Board of Supervisors Representative (arrived at 7:45 pm)
David Pendergrass -- Vice Chair, Mayoral Representative
Brenda Lewis -- Division 1
Judi Lehman -- Division 2
Kristi Markey -- Division 3
Jeanne Byrne -- Division 4
Robert S. Brower, Sr., -- Division 5

Directors Absent: None

General Manager present: David J. Stoldt

District Counsel present: David Laredo

PLEDGE OF ALLEGIANCE

The assembly recited the Pledge of Allegiance.

ORAL COMMUNICATIONS

No comments were directed to the Board during Oral Communications.

PRESENTATIONS

1. Presentation from David Laredo, District Counsel, on the Proposition 218 Process

An outline of Mr. Laredo's presentation is on file at the District office and can be viewed on the MPWMD website. Following his presentation, he responded to questions from the Board of Directors.

The following comments were directed to the Board during the public comment period on this item. (1) **Kevin Stone**, Monterey County Association of Realtors (MCAR), asserted that the Proposition 218 protest hearing process cannot be used for a project that will provide a future benefit such as the groundwater replenish project (GWR) or aquifer storage and recovery (ASR). He asked how the user fee funds would be spent if California American Water (Cal-Am) took over mitigation activities from the District. Mr. Stone advised the Board that the District's proposal will not withstand legal challenge, and stated that his organization will leverage every resource to make sure the public is involved and aware of the protest hearing approach to raise revenue. (2) **Nelson Vega** questioned the District's plan to secure funding for water supply planning, when a water project for the Monterey Peninsula has not been identified. He stated that if the District were confident of the public's support for what it is doing, it would have called for a vote of the local electorate instead of the Proposition 218 protest hearing process. He opined that the protest hearing process gives the public the impression that the funds are needed to balance its budget. (3) **Dale Ellis**, Government Affairs Director for the Monterey County Hospitality Association, expressed opposition to the Proposition 218 protest hearing process. He noted that the public cannot take a position until the

“rules of the road” resolution has been presented. He advocated for a ballot measure to be brought before the voters, instead of the protest hearing. (4) **John Narigi**, Co-Chair of the Coalition of Monterey Peninsula Businesses, described the protest hearing process as “wrong,” that it will be a public relations nightmare for the District, and that legal challenges will be waged against the District related to the proposed user fee. He stated that if the District Board is confident about the need for the user fee, a ballot measure should be brought forward and the District should convince the voters to support it. (5) **Brian LeNeve** asked for the definition of a parcel. He asked if a single-family dwelling, a shopping center, and a golf course were all considered a parcel. (6) **George Riley**, Citizens for Public Water, stated that the District is a major participant in the goal to identify and fund a water supply, yet the California Public Utilities Commission (CPUC) removed one of the District’s mechanisms to collect revenue. Therefore, without that revenue source the District cannot remain a viable water agency. He urged the Board of Directors to defend the agency against its detractors, to stand strong and move ahead. (7) **Jody Hanson**, President and Chief Executive Officer of the Monterey Peninsula Chamber of Commerce (MPCC), expressed opposition to the Proposition 218 protest hearing method. She stated that if the District places the user fee issue before the voters as a ballot measure, the MPCC will support it.

District Counsel Laredo’s responses to the public comments are summarized as follows. (1) The proposed user fee would fund new water projects that would provide water to existing users. The water projects provide replacement water as required in State Water Resources Control Board (SWRCB) Orders 95-10 and 2009-0060, and the Superior Court in the Seaside Basin Adjudication decision. (2) Cal-Am is required to complete mitigation measures, but mitigations must also be carried out by the District to comply with the Allocation Program EIR, and conditions imposed by the SWRCB in the District’s water rights permits. (3) The Proposition 218 process was developed by the Jarvis/Gann anti-tax advocates, then placed on the ballot and approved by California voters. (4) The definition of “parcel” is a piece of land that has an assessor’s parcel number and a water connection. One protest is allowed for every water-served parcel. (5) The Pajaro Valley Water Management Agency implemented a groundwater extraction charge to finance water replenishment for the groundwater basin. The agency determined the charge was a regulatory fee not subject to Proposition 281. The charge financed pipelines, water purchases and was used to eliminate basin overdraft and address saltwater intrusion. The result of a legal challenge to the groundwater extraction charge was that the court determined it was a property related fee. The charge was invalidated because the 218 process had not been followed.

General Manager Stoldt stated that the purpose of the proposed user fee is shifting away from mitigations, and that a White Paper titled The MPWMD Mitigation Program is available (copies provided at the workshop) that describes the mitigation program and how it relates to operation of ASR and other programs.

Director Potter arrived at the meeting at 7:45 pm, following the public comment period on item 1.

2. Presentation from Tom Gaffney of Bartle Wells on Draft Analysis of Alternative User Fee Collection Mechanism

An outline of Mr. Gaffney’s presentation is on file at the District office and can be viewed on the MPWMD website. Following the presentation, Mr. Gaffney responded to questions from the Board of Directors.

The following comments were directed to the Board during the public comment period on this item. (1) **George Riley**, Citizens for Public Water, suggested that the public be provided with a comparison of the user fee previously charged on the Cal-Am bill, against the proposed user fee. He noted that residents in multi-family dwelling units that are not individually metered have no incentive to conserve water or participate in rebate programs. He encouraged the District to develop incentives for that group of water users. (2) **Kevin Stone**, MCAR, stated that the District does not provide water service to a Cal-Am rate payer. He disagreed with the District’s assertion that the proposed user fee would replace the existing fee that could no longer be collected on the Cal-Am bill. He reasoned that Rule 64 of the District’s Rules and Regulations states that if the CPUC should disallow collection of a user fee, it will have no further force or effect. (3) **Brian LeNeve** asked the Board to consider that if any method other than a volumetric system is implemented, there will be no incentive to conserve water. (4) **Nelson Vega** suggested that if the proposed user fee is billed on a monthly basis to water users, they will develop a relationship with the District and hold it accountable. He stated that if the CPUC determined that the District had misused the previous user

fee, or collected revenue in violation of the law, then the District should return those funds to the ratepayers.

District Counsel Laredo provided the following comments. (1) The District regularly exercises its water rights. It provides water through its ASR program that Cal-Am withdraws and delivers to its customers at no charge. The District also purveys reclaimed water through the CAWD/PBCSD Wastewater Reclamation Project, which was designed to off-set potable water use that would otherwise be drawn from local water sources. The District's mitigation efforts are used to support existing water extraction. The District is a wholesaler and water manager which are authorized purposes for which a user fee may be charged. (2) The CPUC disallowed continued collection of the user fee on the Cal-Am bill, but did not provide findings to that effect. There is no document that states a reason for discontinuance of collection of the user fee.

3. Review Costs and Methods for Alternative User Fee Collection

Suresh Prasad, Chief Financial Officer and Administrative Services Division Manager for the District addressed the Board. A summary of his presentation is on file at the District office and can be viewed on the MPWMD website. Following the presentation, Mr. Prasad responded to questions from the Board of Directors.

The following comments were directed to the Board during the public comment period on this item. (1) **Nelson Vega** stated that he did not support the proposed user fee, but if the District did move forward on the proposal, the fee should be collected by the Monterey County Assessor due to the cost savings. Alternatively, the fee could be collected by the District per direct billing on an annual basis. He advised the Board that a property owner is not always able to automatically pass a new fee through to his tenants. (2) **Kevin Stone**, MCAR, said that without Cal-Am's proprietary billing information for each parcel and connection, an accurate representation of water use on each parcel cannot be determined. This leaves the District open to legal challenge on the proposed user fee. He urged the Board of Directors to reevaluate the District's priorities and operations in order to keep costs within the limits of its reduced revenue.

Mr. Laredo presented the following comments. (1) The Cal-Am billing information is not available to the District; therefore, the proposed fee must be assessed as fairly as possible with available data. (2) The fact that more precise data is not available, is not a valid reason for the proposed user fee to be overturned in a court of law.

4. Preliminary Staff Report on Budget and Cost Allocation Issues for User Fee

David Stoldt, General Manager of the MPWMD addressed the Board. A summary of his presentation is on file at the District office and can be viewed on the MPWMD website. Following the presentation, Mr. Stoldt responded to questions from the Board of Directors.

The following comments were directed to the Board during the public comment period on this item. (1) **Kevin Stone**, MCAR, objected to the District's proposed user fee being equated with fees collected by the Monterey Regional Water Pollution Control Agency (MRWPCA). He stated that the District does not provide an immediate benefit to the property owner. He opined that the public will not be willing to pay a user fee for which no immediate benefit will be received. He cautioned the Board of Directors that MCAR is prepared to leverage every resource available to be sure the public is aware of the Proposition 218 process so they can participate in the protest vote. Mr. Stone urged the Board to either consider other forms of financing, or restructure the District's priorities. (2) **Nelson Vega** suggested that it would be preferable to construct a 9.1 million-gallons-per-day desalination plant, and not reduce the size based on ASR or GWR production. He requested that the project not be downsized, so that water would be available in the event of a drought. He stated that as the size of the desalination project increases, the cost for water is reduced.

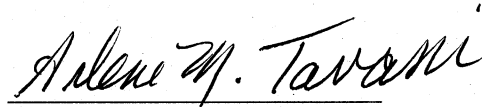
Mr. Stoldt presented the following comments. (1) It is anticipated that the water supply project will be sized to meet the shortfall identified in SWRCB Order 95-10 and 2009-0060, it will not provide water for growth. The project will be either a desalination plant in combination with GWR and ASR which would be the lowest cost, or a larger desalination plant combined with some ASR which would be higher in cost due to the increased dependence on ASR. In either case the amount of water produced overall would be the

same. (2) Proposition 218 funds can be utilized for building up reserves to benefit future users, such as repair and replacement of facilities that future users will benefit from.

Mr. Laredo stated that on April 23, 2012, Cal Am will file its application with the CPUC for construction of a water supply project. Cal-Am has expressed a preference for a multi-pronged approach that would include: desalination, GWR and ASR. There is no guarantee that a desalination project will be on-line by 2016. However, there is the possibility that ASR and GWR could be developed to supplement our water supply until a desalination project is on-line. It is important that the District follow-through with its efforts to develop ASR and GWR .

ADJOURNMENT

The meeting was adjourned at 9:35 pm.



Arlene M. Tavani,
Deputy Secretary to the Board

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