



FINAL MINUTES  
Regular Meeting  
Board of Directors  
Monterey Peninsula Water Management District  
April 16, 2012

The meeting was called to order at 7:12 p.m. in the Regency Ballroom, Hyatt Regency Monterey.

**CALL TO ORDER/ROLL CALL**

*Directors Present:*

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 (participated by telephone during item 12 only)

*Directors Absent:*

Dave Potter, Chairperson – Monterey County Board of Supervisors Representative

*General Manager present:* David J. Stoldt

*District Counsel present:* David Laredo

The assembly recited the Pledge of Allegiance.

**PLEDGE OF ALLEGIANCE**

Mary Lynn Pinto of Bayshore Real Estate Services addressed the Board. She asked why the California-American Water Company (Cal-Am) monthly billing statement includes a 12.59 percent "MPWMD User Fee Surcharge." General Manager Stoldt stated that the fee was placed on the bill in April and that an explanation would be provided under item 10, Attorney's Report.

**ORAL COMMUNICATIONS**

The Consent Calendar was approved on a unanimous vote of 5 – 0 by motion of Director Markey and second of Director Byrne. Directors Byrne, Lehman, Lewis, Markey and Pendergrass voted in favor of the motion. Directors Brower and Potter were absent. Director Byrne requested that the Fiscal Year 2010-2011 Mitigation Program Annual Report be brought back for review during hearings on the Fiscal Year 2012-2013 MPWMD Budget.

**CONSENT CALENDAR**

Approved.

1. **Consider Adoption of Minutes of the March 19, 2012 Regular Board Meeting and Correction to Minutes of December 12, 2011**

Approved.

2. **Consider Authorization to Extend Contract to Provide Internet Service to Sleepy Hollow Fish Rearing Facility**

Approved.

3. **Consider Expenditure of Budgeted Reimbursable Funds to Contract with Right on Q Hydrogeology to Provide Technical Support to Assess and Inventory Data to Support a Future Coupled Surface Water Groundwater Modeling Effort in Carmel Valley**

Approved.

4. **Receive Fiscal Year 2010-2011 Mitigation Program Annual Report**

Approved.

5. **Receive and File District-Wide Annual Water Distribution System Production Summary Report for Water Year 2011**

Approved.

6. **Receive and File District-Wide Annual Water Production Summary Report for Water Year 2011**

Approved.

7. **Consider Approval of Treasurer's Report for February 2012**

**Vice Chair Pendergrass announced that agenda Item 14 was deferred to the May 21, 2012 Board meeting, and that agenda item 15 had been pulled off the agenda.**

General Manager Stoldt stated that as of March 31, 2012, water production within the Monterey Peninsula Water Resources System was 78 acre-feet below production limits. Rainfall in March was measured at 118% of the historical average, or 60% of the year-to-date average. Unimpaired Carmel River Flow was measured at 21% of the year-to-date average, and was described as on the low end of dry. Storage was 96% of the year-to-date average. Steelhead migration was 112% of the year-to-date average. Water year 2012 may be considered the third driest year since 1991. A hydrologic drought is described as two or more consecutive, critically dry years; therefore, it would be premature to state the area was experiencing a drought.

No report presented.

#### **GENERAL MANAGER'S REPORT**

8. **Status Report on California American Water Compliance with State Water Resources Control Board Order 2009-0060 and Seaside Groundwater Basin Adjudication Decision**

9. **Update on Development of Water Supply Projects**

District Counsel Laredo stated that at the 5:30 pm closed session he provided a status report to the Directors on items 3.A through 3.E. The Board provided direction to Counsel, no reportable action was taken.

District Counsel Laredo responded to the question raised by Mary Lynn Pinto about the origin of the 12.95% MPWMD User Fee Surcharge. He stated that the California Public Utilities Commission (CPUC) in case 10-01-012 authorized Cal-Am to collect a surcharge that would pay for previous expenditures (2009 through 2011) related to Carmel River mitigation efforts. The District will coordinate with Cal-Am on listing a more accurate title for the fee. Mr. Stoldt noted that the fee would be collected for a twelve-month period. The fee was originally scheduled to begin in October 2011, but implementation had been delayed.

Director Byrne reported that since the March 19, 2012 Board meeting, she met with the Monterey County Hospitality Association (MCHA) and the Monterey County Property Owners Association (MCPOA).

The meeting was recessed for three minutes so that Director Brower could be connected to the meeting via telephone.

Mr. Laredo introduced Mark Mandel, an attorney and expert on Proposition 218. Mr. Mandel provided an overview of the criteria that must be met for a fee to qualify for consideration under Proposition 218. He also described the process for public notice, review and protest of the proposed fee. Mr. Mandel

#### ATTORNEY'S REPORT

##### 10. Report on 5:30 pm Closed Session of the Board

##### 3. Conference with Legal Counsel – Existing Litigation (Gov. Code 54956.9 (a))

- A. MPWMD v. State Water Resources Control Board; Superior Court Case No. 1-10-CV-163328 -- Cease and Desist Order
- B. Application of California American Water Company to CPUC Application No. 10-01-012 – User Fee Collection; Cal-Am v. MPWMD: M113336
- C. Application of California American Water to the CPUC (Application No. 04-09-019) Coastal Water Project
- D. Richard & Sharlene Thum v. MPWMD; Superior Court Case No. M113598
- E. Application of California American Water to the CPUC (Application No. 10-09-018) San Clemente Dam Removal

#### DIRECTORS' REPORTS (INCLUDING AB 1234 REPORTS ON TRIPS, CONFERENCE ATTENDANCE AND MEETINGS)

##### 11. Oral Report on Activities of County, Cities, Other Agencies/Committees/Associations

#### PUBLIC HEARINGS

##### 12. Proposal for Establishment of Alternative User Fee Collection Mechanism

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

explained that Proposition 218 established three new classes of revenue: taxes, fees and assessments. Taxes can be levied for general revenue purposes. Two-thirds approval of the voters is required for a special tax earmarked for a special purpose. A benefit assessment is a charge levied on a property to recover costs of a benefit provided to that property such as sewer assessments, landscape or street maintenance. Establishment of a benefit assessment does not require an election, but property owners do participate in a weighted vote. The third category is a property related fee, charged to pay the cost of providing a service to the property being served. The proposed user fee meets the criteria for a property related fee. Notice must be sent to each affected property owner describing the fee and if 50% of the owners of affected parcels submit a written protest, the fee cannot be imposed. If the fee is for anything other than water, sewer or refuse collection, a subsequent election is also required. The proposed user fee is for water service so there is no requirement for an election, the Board may adopt the fee following the protest hearing. Mr. Mandel explained that a user fee based on a percentage of the water bill had been collected on the monthly Cal-Am bill. The CPUC has disallowed collection of that fee. The proposed user fee is for water service, in that water is provided to end users via a jointly operated system between Cal-Am and the District. The District obtains water, pumps that water into the aquifer, then pumps it out of the aquifer using wells it owns and Cal-Am operates. The water is distributed via Cal-Am facilities to the end users of the water. The user fee facilitates water service to existing properties and allows the shifting of some water sources from Cal-Am to the District. This water is supplied to existing customers.

An outline of Mr. Gaffney's presentation is available for review on the District's website and can be obtained at the District office.

An outline of Suresh Prasad's presentation is available for review on the District's website and can be obtained at the District office.

An outline of Mr. Stoldt's presentation is available for review on the District's website and can be obtained at the District office.

The following comments were received from the public on items 12 A through 12 I. **(1) Noni McVey**, President of the Monterey County Association of Realtors (MCAR) representing over 1,250 members, described the proposed fee as a direct threat to private property rights. She expressed opposition to

- B. Presentation from Tom Gaffney of Bartle Wells on Rate and Fee Study Report**
- C. Presentation from Administrative Services Division Manager on Costs and Methods for Alternative User Fee Collection**
- D. Presentation from General Manager on Budget and Cost Allocation Issues for User Fee**

imposition of the fee without a vote of the electorate.

(2) **Lauren Samuels**, Vice Chairperson of the Seaside Taxpayers Association, asserted that the District's goal is to advance the bureaucracy and that the directors have no interest in cost cutting. He recommended that the agency be abolished. (3)

**Kevin Stone**, member of MCAR and speaking as a rate payer from Carmel Valley, expressed opposition to the fee which he described as an illegal and unfair revenue collection mechanism. He opined that a vote should be conducted on the proposed fee. (4) **John**

**Turner**, Chair of the Monterey County Property Owners Association (MCPOA), expressed opposition to the protest hearing process for implementation of the user fee. He requested that the voters make a decision on the user fee through a ballot measure. (5)

**Sam Teel** read a statement dated April 16, 2012 from the Coalition of Peninsula Businesses (CPB) that is on file at the District office and can be viewed on the District's website. The letter outlined the Coalition's request that the Board discontinue the Proposition 218 protest procedure and instead initiate a public vote on the proposed fee. (6) **Bill Hood**, former

water resources attorney for the Department of Water Resources, expressed agreement with the opinion outlined in the April 13, 2012 letter from Kronick, Moskovitz, Tiedemann & Girard (on file at the District office and on the District's website) that the proposed user fee is not a tax and can be implemented through the Proposition 218 protest hearing process. (7) **Roger Dolan**, resident of

Carmel Valley, urged the Board to proceed with collection of the user fee on the assessor's bill. He stated that the District could offer the only publicly financed option for a water supply project. He stated that a public vote would take eight months, which would delay the water project decision making process. He noted that in prior years, the public voted against funding for both a dam and a desalination project. Mr. Dolan opined that the public must take responsibility for funding a water supply project. (8) **Skip Lloyd**, a long-time resident of Monterey County, stated that the community must meet the 2016 deadline for compliance with Order 2009-0060 and must also pay for new water production facilities. He urged the Board to proceed with the Proposition 218 protest hearing process for establishment of the proposed user fee. (9) **John**

**Narigi**, General Manager of the Monterey Plaza Hotel and Chair of the CPB, expressed opposition to the Proposition 218 protest hearing process for establishment of a user fee. He advocated for placement of a ballot measure before the electorate. He suggested that representatives from the District should contact the Monterey County Hospitality Association (MCHA) and discuss suggestions they have for the proposed user fee rate structure. (10)

**Kim DiBenedetto**, former President of MCAR, and a

member of the Issues Mobilization Political Action Committee of the California Association of Realtors, speaking as a resident and ratepayer of the City of Carmel, described the proposed user fee as unfair and unequitable. She stated that the District would “go down in vain” if the Board continued to resist the will of its constituents and proceed with the Proposition 218 process. **(11) Jody Hanson**, President and Chief Executive Officer of the Monterey Peninsula Chamber of Commerce, expressed opposition to the Proposition 218 protest hearing method for implementation of the user fee. She urged the Board to place a ballot measure before the voters. **(12) Nelson Vega**, a member of the Monterey Commercial Property Owners Association but speaking for himself, stated that the user fee will be charged to apartment complex owners who will then pass the fee onto their renters, the people who have no choice in the decision making process. He disagreed with the protest vote process, and requested that the issue be brought to the voters so that renters can participate. **(13) George Riley** took issue with the parties who advocate for a public vote on the user fee issue but did not raise similar concerns during hearings on the Regional Water Project that contained no provision for local representation. He stated that the Proposition 218 protest hearing process was developed as a method for utilities to raise necessary funds in the face of anti-tax sentiment. He urged the Board to move ahead with the user fee, find the middle-ground and not be swayed by the opposition. **(16) Ron Chesshire**, 57 year resident of Monterey County, advised the Board that the District would gain respect in the community if it would abandon the Proposition 218 protest hearing method to establish a user fee, and instead schedule a ballot measure. He stated that the Board should defer any action on a user fee to fund water supply projects until the CPUC makes a final decision on a water supply solution. Mr. Chesshire said that the community wants a water supply that will provide for future generations, not just to meet the current water supply shortfall. **(17) Scott Dick** expressed opposition to the protest hearing process. He described the proposed user fee as a tax. He stated that if the District can point to an engineering study that shows how residents of Carmel Valley will receive water from the Aquifer Storage Recovery project, then he would agree to pay a fee for that water. **(18) Bill Hood** stated that if a private company builds a water supply project, the rate payers will fund it without benefit of a vote. The cost will be much higher than the \$3 million requested by the District from the proposed user fee. **(19) Mary Lynn Pinto** disagreed with the District’s assertion that it is a water purveyor. She stated that 45% to 50% of the District’s budget should not be funded by property owners. **(20) Dean Provence** a

ratepayer and realtor expressed opposition to the Proposition 218 protest hearing process as it would serve to deteriorate the voters' confidence in the District. He preferred that the District bill him. He asserted that the Board is slow to develop a water supply, because if it did, there would be no further need for the District. (21) **Carolina Baine**, a resident of Carmel-by-the-Sea, advised the Board to reduce staff and live within its reduced budget. She asked the Board to take no action on the protest hearing process, as many questions about the District's budget for a new user fee must be answered before a vote is conducted. (22) **Michael Waxer** stated that in the past, the District determined that funding for a water supply project must be approved by the voters. He questioned the current determination that a vote is not required to fund ASR and groundwater replenishment. He opined that many people in the audience were supporters of the goal to develop a water supply, but they are opposed to the Proposition 218 protest hearing method of raising funds. (23) **Linda Dorris**, a 44-year resident of Monterey County and Realtor for 37 years, stated that the protest hearing methodology is unacceptable. She said that if the District does have a water supply solution, it is very important to develop an effective public outreach campaign that explains the project so that the public can support it. (24) **Paul Larisey** expressed disagreement with the plan to base the proposed user fee on the water meter size. (25) **Sue McCloud**, Mayor of Carmel-by-the-Sea, stated that the CPUC and State Water Resources Control Board are paying close attention to the Monterey Peninsula. She urged members of the community and the Board to put the past behind them and work together on a solution because the 2016 date for implementation of water cut-backs is near. (25) **Felix Bachofner**, Mayor of the City of Seaside, expressed opposition to the Proposition 218 protest hearing process and stated there were other funding methods. He urged the Board to be sure that if the user fee is implemented, there will be no double charging. He asserted that if the user fee is not implemented, he has a plan by which the Monterey Regional Water Pollution Control Agency could fund groundwater replenishment on its own. Vice Chair Pendergrass closed the public hearing on items 12-A through 12-I.

The rate study was adopted unanimously on a motion by Director Brower and second of Director Lehman. The motion was approved on a roll-call vote of 6 – 0. Directors Brower, Byrne, Lehman, Lewis, Markey and Pendergrass voted in favor of the motion. Director Potter was absent.

On a motion by Director Brower and second of Director Byrne, the first reading version of Ordinance No. 152 was adopted on a roll-call vote of

**E. Review and Adopt Rate Study Report**

**F. Consider First Reading of Ordinance No. 152 -- Establishment of Water Use Fees**

6 – 0 with the following amendments. (1) Page 144 of the Board packet, delete Finding No. 19 and also amend the last sentence of Finding No. 25 to read, “This ordinance fixes and collects rates and charges for the providing or the availability of water supply services...” (2) Page 145 of the Board packet, amend the last sentence of Finding No. 31 to read, “Revenue from the fee or charge will not be used for any purpose other than water supply activities for which the fee or charge was imposed, but will not fund general governmental activities”; and amend Finding No. 34 to read, “The fees enacted by this ordinance shall not exceed the estimated reasonable cost to provide the water supply and related water supply management services...” (3) Page 146 of the Board packet, delete the last sentence of Finding No. 35 that begins with the words “As such.” Directors Brower, Byrne, Lehman, Lewis, Markey and Pendergrass voted in favor of the motion. Director Potter was absent.

No discussion. This item set for action at the June 12, 2012 Board meeting.

On a motion by Director Markey and second of Director Lehman, Resolution 2012-03 was adopted on a roll-call vote with the following amendment: Section Five, A, (iii), should be amended to read, “Identity, by street address or assessor’s parcel number (APN), of the parcel with respect to which the protest is made.” Directors Brower, Byrne, Lehman, Lewis, Markey and Pendergrass voted in favor of the motion. Director Potter was absent.

On a motion by Director Lehman and second of Director Lewis, the hearing notice language was approved unanimously on a vote of 6 – 0 with the following amendments. (1) Page 176 of the Board packet, section titled Calculation of Water Use Fee, first sentence, delete the word “variable” and replace with the word “water”, and after the word “fixed” add the word “meter”. (2) In the same paragraph, the third sentence, delete the word “variable” and replace it with the words “water usage”. Directors Brower, Byrne, Lehman, Lewis, Markey and Pendergrass voted in favor of the motion. Director Potter was absent.

**Director Brower excused himself from the meeting following action on Item 12.I.**

On a motion by Director Byrne and second of Director Lehman, the public hearing on the second reading and adoption of Ordinance No. 150 was deferred to the May 21, 2012 Board meeting. The motion was approved unanimously on a vote of 5 – 0. Directors Byrne, Lehman, Lewis, Markey and

**G. Review Alternate Draft Resolutions for Collection of Water Use Fee**

**H. Adopt Resolution 2012-03 -- Proposition 218 Process Implementation**

**I. Approve Language for Proposition 218 Hearing Notice**

**13. Consider Second Reading and Adoption of Ordinance No. 150 -- Amendments to Rule 21.A -- Noticing Requirements for Water Distribution System Well Capacity Testing**



Pendergrass voted in favor of the motion. Directors Brower and Potter were absent.

Deferred to the May 21, 2012 Regular meeting of the Board of Directors.

No action or discussion on Item 15.

On a motion by Director Markey and second of Director Lewis, Resolution No. 2012-04 was adopted unanimously on a vote of 5 – 0. Directors Byrne, Lehman, Lewis, Markey and Pendergrass voted in favor of the motion. Directors Brower and Potter were absent.

During the public comment period on this item, Ron Chesshire expressed support for adoption of Resolution No. 2012-04. He went on to state that

the Board made a mistake by moving ahead on the Proposition 218 protest hearing process.

There was no discussion of the Informational Items/Staff Reports.

The meeting was adjourned at 10:45 pm.

14. **Consider First Reading of Ordinance No. 151 -- Implementing High Efficiency Toilets as the District's Standard and Amending the District's Water Efficiency Standards**

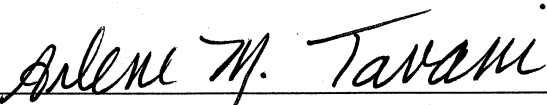
#### **ACTION ITEMS**

15. **Authorize General Manager to Enter into Memorandum of Understanding (MOU) with Monterey Regional Water Pollution Control Agency and Cal-Am re Joint Funding of a Groundwater Replenishment Project**
16. **Consider Resolution No. 2012-04 Approving Full Implementation of Aquifer Storage and Recovery Water Project 2**

#### **INFORMATIONAL ITEMS/STAFF REPORTS**

17. **Letters Received**
18. **Committee Reports**
19. **Carmel River Fishery Report**
20. **Water Conservation Program Report**
21. **Monthly Allocation Report**
22. **Monthly Water Supply and California American Water Production Report**
23. **Quarterly Carmel River Riparian Corridor Management Program Report**
24. **Quarterly Water Use Credit Transfer Status Report**

#### **ADJOURNMENT**

  
Arlene M. Tavani, Deputy District Secretary