

## *History of the MPWMD Connection Charge*

A lengthy legislative history underlies adoption of the Water Management District's connection charge. This background was compiled and preserved by the District as evidence before the Superior Court in a lawsuit that validated the connection charge under District Rule 24 pursuant to section 860 of the California Code of Civil Procedure (Case No. M15851). The Superior Court determined the connection charge constituted an enforceable capacity charge.

The Water Management District first imposed connection charges pursuant to Ordinance No. 8 adopted on December 14, 1981. This connection charge did not establish a sinking fund, however, but was used to pay "preliminary project expenses" relating to a water augmentation project. The key findings for Ordinance No. 8 were set forth in paragraphs 5, 8, 9, 12 and 13,

[¶5] The Monterey Peninsula Water Management District intends to augment the supply of potable water for domestic use purposes on the Monterey Peninsula and throughout the District; [¶8] The Monterey Peninsula Water Management District has examined alternate methods of augmenting potable water supplies and of conserving existing water supplies; [¶9] The precise cost of preliminary project expenses is not at this time ascertainable; but the costs of environmental review, project design, engineering, revenue funding, and election expenses are substantial and do not vary significantly from project to project; [¶12] The Monterey Peninsula Water Management District is not fully able to fund preliminary project expenses from its general fund revenues in a timely manner and at the same time fulfill its other obligations of integrated management of the District's water resources; [¶13] The Monterey Peninsula Water Management District is authorized to impose connection fees and connection charges and, by allowing additions and expansions to District water distribution systems, the District has and will have reserved capacity and has made a commitment to such new water users to provide them with potable water and service facilities.

This connection charge was fashioned upon the model described by the Appellate Court in Carlton Santee Corp. v. Padre Dam Municipal Water District (1981) 120 Cal. App. 3d 14, 174 Cal Rptr 413.

The 1981 connection charge was next modified in 1984 after the Board received a report from its financial expert.<sup>1</sup> This report reviewed a preliminary financing plan for the New San Clemente Dam project. Mr. Bodner told the Board,

One thing that becomes very apparent and shocking is the total financing cost. I understand that you have substantial lead time between now and when the vote might be taken and when the project might be completed. For every dollar that you might be able to fund into the project on a pay-as-you-go basis or on a cash basis, you can save yourself \$2 or \$3 in financing costs. We bring to your attention the opportunity that the District may have in terms of establishing some revenue raising devices between now and the start of construction to help cut down the financing costs which are independent from the size of the project. (Vol. I, p. 26)<sup>2</sup>

---

<sup>1</sup> The consultant was Ernie Bodner of Rausher Pierce Refsnes, Inc.

<sup>2</sup> Vols. I and II, Transcripts re MPWMD Ordinance 21, Case No. M 15851.

Following Mr. Bodner's presentation at the meeting of July 9, 1984, Director Heuer made a motion directing staff to pursue expansion of the connection charge and development of the sinking fund,

Heuer: I'd like to make two motions. The first one is a follow-up of [County Supervisor] Bill's [Peters] suggestion. That is that the staff be directed to prepare an ordinance to establish what you might call a sinking fund, to start collecting money now through a surcharge on connection charges and that these funds be held in reserve and used only for building a dam or some other major water project. And we can discuss a little bit what some of that ordinance might be. (Vol. I, p. 33)

In later discussion, included the following exchange of ideas between Board members:

Heuer: Madam Chairman<sup>3</sup>, there are several points that I would suggest be included in the ordinance. One, that it provide either a total exemption or a much lower fee for low and moderate income housing. That the funds should be kept in a separate account and should be used only for final design and construction of a dam or other major water project, and should be expended only after a public vote on the project. That, if no water project is built within some specified time frame that the funds should be returned with interest to those who paid it.

Peters: What this District has as its objective is to augment the water supply. If it does it in one large dam or 27 hyacinths projects or 2 million fields that gives you a gallon each, it makes no difference. And if you collect it because you're going headlong toward a dam that fails, you still want to keep your ability to finance a water supply project.

Heuer: Personally, I have no concerns that these funds are not going to be expended for a major water project. I think there are people who do have some concerns.

Peters: We could have a whole series of minor water projects.

Heuer: Water augmentation projects.

Peters: Water augmentation projects. (Vol. I, p. 35)

The refund provision was discussed in comments made at the Board meeting of August 13, 1984,

Heuer: I think its very important that the, I accept David's recommendation in one of our committee meetings that it (the refund) will have to be at the discretion of a future board. It shouldn't be simply at the failure of a dam vote because that's not going to solve our water supply. We're still going to need to do something. We'll either propose an alternative project or restructure the dam project and put it back to vote again. So I think there does have to be some discussion of the future Board. (Vol. I, p. 129)

---

<sup>3</sup> The Chairman of the Board of the Water Management District during these proceedings was Nancy McClintock.

In September of 1984, the Board delayed action so that an ad hoc finance advisory committee could review and comment on the structure and magnitude of the sinking fund. The Board's intent, however, is seen in the jocular manner in which the finance advisory committee was created,

Peters: Okay, I move that we direct the committee to evaluate financing for a dam and report back to us and present a scope of the issues that they will consider.

Bernardi: You want the, that is, the water project.

Peters: Yes I do.

Speaker: How many water projects? (Laughter)

Speaker: Yes, yes, water projects!

Chairman: If we got to the vote, and our first project, which is the dam, was turned down, did we want it to be able to have a back up? Right?

Peters: Right. (Vol. I, p. 207)

Permanent rules for the sinking fund ordinance were delayed pending the recommendation of the finance advisory committee. During a 12-week period the committee held over ten meetings. To enable issuance of permits while the committee deliberated, the Board of Directors enacted Ordinance No. 20 to establish an "interim connection charge" based on the advice of the committee. This interim charge was based on a percentage of building value (as opposed to the fixture unit and regional average water use method later adopted in Ordinance No. 21). Costs funded by the connection charge were not related to any one specific project:

Chairman: I'd just like to say for the record that the amounts of money that are being collected by this ordinance were determined on the basis of a project for a new dam on the Carmel River...

Buel: No Ma'am, the committee was specific.

Speaker: Exactly.

Speaker: Well, why do we have to include that in the ordinance?

Speaker: It's just that the amount of money, this is simply a statement of fact, the amount of money that this ordinance is designed to achieve was determined on the basis of consideration of a specific project. Obviously if that project doesn't go through we are going to have to have other things and that's why we need flexibility to spend that money on any project. (Vol. II, p. 287)

This point was criticized by a member of the public. Carl Hooper commenting on the action of the Board adopting Ordinance No. 20 stated, "I find that there is no mention in the ordinance [No. 20] of

constructing a dam. It talks about the water augmentation projects... I just want to suggest that it was the committee's intent that the refunds should be considered if the specific dam for which this procedure was proposed is not to be constructed." (Vol. II, p. 334) Despite Mr. Hooper's objection that the connection charge was crafted solely for use for a specific dam, the generic "water augmentation project" wording in Ordinance No. 20 was enacted by a vote of five to two, creating the interim sinking fund.

The Board then took several months to discuss and review the final sinking fund ordinance. Debate focused on alternative means to calculate and apply connection charges but did not again review the purpose or the magnitude of the amount to be collected. General Manager, Bruce Buel, commented at the first reading of Ordinance No. 21 on February 11, 1985, "... one of the things that staff would like to leave on the record is that the ordinance [No. 21] proposes to generate the same funding that was originally recommended by the finance advisory committee."<sup>4</sup> (Vol. II, p. 449) Ordinance No. 21 was entitled, "An Ordinance of the Board of Directors of the Monterey Peninsula Water Management District Establishing Water Distribution System Connection Charges."

Key findings adopted for Ordinance No. 21 were set forth in paragraphs 13, 15, 17, and 18,

[¶13] The Monterey Peninsula Water Management District is presently planning a water supply project with an estimated cost of approximately \$34,000,000.00. The cost of financing this project could exceed \$172,000,000.00, with an annual cost of \$6,700,000.00. These long-term costs of this water supply project can be substantially reduced by the creation of a sinking fund to pre-pay a portion of the project construction costs. [¶15] The Monterey Peninsula Water Management District intends to augment the supply of potable water for domestic use purposes on the Monterey Peninsula and throughout the District; [¶17] The Monterey Peninsula Water Management District has examined alternate methods of augmenting potable water supplies and of conserving existing water supplies; [¶18] The precise cost of preliminary project expenses is not at this time ascertainable; but the costs of environmental review, project design, engineering, revenue funding, and election expenses are substantial and do not vary significantly from project to project.

Ordinance No. 21 was adopted on March 11, 1985, by a vote of six to one. This Ordinance revoked the interim connection charge implemented by Ordinance No. 20, and enacting Rule 24 "Connection Charges."

Although at one time a provision was inserted into Rule 24 to limit expenditure of connection charge revenue before a water augmentation project vote, Ordinance No. 34, on May 9, 1988, deleted the required vote to use the funds for water supply project expenses.

De LAY & LAREDO

David C. Laredo

---

<sup>4</sup> The findings used for Ordinance No. 21 paralleled those that were earlier adopted for Ordinance No. 20.

## CHARGE TO THE MPWMD ADMINISTRATIVE COMMITTEE

*as adopted by the Administrative Committee on March 10, 1998*

### 1. Primary Function

The committee shall provide advice to the board of directors of the Monterey Peninsula Water Management District on matters affecting management and administration of the District including financial, human resources, risk management, information technology, purchasing, and other related fields.

### 2. Process

The committee is expected to provide a forum for in-depth deliberation and discussion prior to consideration of issues by the full Board. Normally, committee meetings will proceed those of the Board of Directors and result in recommendations to the Board. The Administrative Committee is subject to the provisions of the Ralph M. Brown Act as amended.

### 3. Composition and Structure

- a) The voting members of the Committee shall consist of elected Directors of the Monterey Peninsula Water Management District appointed by the Board Chairperson.
- b) A quorum of two (2) voting members shall be required to transact business of the committee. Action may be taken by majority vote of those present. The chair of the committee shall be elected by the members of the committee; meetings shall be held as determined by the chairperson.
- c) The General Manager (or a designated staff member) of the Monterey Peninsula Water Management District shall also serve on the committee as an ex officio, non-voting member. The Board Treasurer shall serve in an ex officio capacity and as secretary to the committee and provide other support as appropriate. Other District staff may meet with the committee from time to time and serve as a resource.

### 4. Responsibilities of the Committee

- a) To meet as required on the call of the committee chair.
- b) To provide timely advice to the board of directors of the Monterey Peninsula Water Management District on matters affecting the management and administration of the District including financial, human resources, risk management, information technology, purchasing, and other related fields.
- c) To undertake other tasks as designated by the Board Chairperson.

U:\ray\wp\adcom\2000\charge