



**MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT**

5 HARRIS COURT, BLDG. G  
POST OFFICE BOX 85  
MONTEREY, CA 93942-0085 • (831) 658-5600  
FAX (831) 644-9560 • <http://www.mpwmd.dst.ca.us>

# SUPPLEMENT TO 9/19/05

## MPWMD BOARD PACKET

Attached are copies of letters received between August 6, 2005 and September 2, 2005. These letters are also listed in the September 19, 2005 Board packet under item 12, Letters Received.

<b>Author</b>	<b>Addressee</b>	<b>Date</b>	<b>Topic</b>
Paula Berthoin	David A. Berger	8/4/05	Watershed Festival of Life/Solar Home Tour/Sustainability Fair
Hank Smith	MPWMD Board	8/4/05	Prosecute Violators of MPWMD and California Department of Fish and Game Regulations (August 16, 2005 Reply of David A. Berger also attached.)
Frank Kalauch	Henrietta Stern	8/8/05	Comment on 2004 MPWMD Annual Report (August 8, 2005 response by Henrietta Stern also attached.)
Monique Gardiner.	David A. Berger	8/10/05	Thank You for Participation in Historic Garden League Monthly Meeting
Robin McCrae	MPWMD Board	8/15/05	Request to modify water credit transfer rules (August 31, 2005 Reply of David A. Berger also attached.)
Walter Clark	MPWMD Board	8/18/05	Email from Walter Clark re Denial of Gramespacher appeal. (August 26, 2005 response by General Manager is also attached.)
Dorothy Post Zeder	MPWMD Board	8/20/05	Dredging Los Padres and San Clemente Reservoirs. (8/23/05 response by the General Manager is also attached.)
Marilyn Maxner	League of Women Voters of the Monterey Peninsula	8/24/05	Town Hall Meeting on Water Supply Projects (9/2/05 response by General Manager Berger is attached.)
Donald S. Clark	MPWMD Board	8/25/05	Request to Reconsider May 16, 2005 action on the Gramespacher appeal (8/26/05 response letter from David Berger is also attached.)
Anthony Lombardo	David A. Berger	8/30/05	Quail Lodge Water Credit Determination (8/31/05 response letter from David Berger is also attached.)



RECEIVED

AUG - 9 2005

MPWMD

INSPIRING RESTORATION OF CULTURE,  
COMMUNITIES AND HABITATS.

August 4, 2005

David A Berger  
General Manager, MPWMD  
5 Harris Court, Bldg. G  
Post Office Box 85  
Monterey, CA 93942

Dear Mr. Berger,

Thank you for the sponsorship of \$250 for the Watershed Festival of Life/Solar Home Tour/Sustainability Fair. We greatly appreciate the continued support and generosity of the Monterey Peninsula Water Management District.

We look forward to the MPWMD being at the Watershed Festival of Life on October 8. We also welcome the District to have a table at the Sustainability Fair on October 1 at the Carmel Middle School Habitat. I will be sending more detailed information to Thomas.

For rivers and life ~

Paola Berthoin

RisingLeaf Tax ID #: 74-3065745

RECEIVED<sup>3</sup>

Hank Smith  
PO Box 4076  
Monterey, CA 93942-4076  
831-372-8226

AUG - 8 2005

MPWMD

4 August, 2005

Board of Directors  
Monterey Peninsula Water Management District  
PO Box 85  
Monterey, CA 93942-0085

Dear Sirs:

This is a request for you to join the California Department of Fish & Game, Monterey County Sheriffs Department, and National Marine Fisheries in taking criminal prosecution action against the individuals who drove their 4 wheel drive vehicles in the river bed of the Carmel River, Monday night , July 25, 2005.

The Sheriff Department case number for the above violation is 06459-05 and the deputy who filed this report was Jess Mason. The report includes the license numbers of two vehicles involved in this violation. Not only did the individuals violate State and Federal laws but your MPWMD ordinance as well.

A MPWMD biologist observed a dead steelhead in the tracks the vehicles left in the bed of the river. This is not a surprising result given that at this time of year, fish are concentrated in small pools due to the drastically reduced river flow. It is also at this time of year, rescue teams from both MPWMD and the Carmel River Steelhead Association (CRSA) are engaged in extensive fish rescue operations.

This violation represents a consistent pattern of criminal behavior by individuals who defy both written and personal verbal warnings against this activity. In February, another CRSA member (Bob Zampatti), and I observed an individual operating an ATV on the banks and in the river bed. I told him such vehicle operation was a violation of both your MPWMD ordinance and a CDFG law. When he continued this activity I asked if he understood what I had just said and he said he did but that he was only going to do it for another 15 minutes. He continued well after I told him I was dialing on my cell phone to report this violation.

MPWMD personnel have posted signs in this area to inform people of your ordinance. These signs have been knocked down together with planted bank restoration vegetation and damage to irrigation lines. The public information campaign is not working.

I request that the MPWMD take the next step in preventing this destructive and criminal behavior by joining in the prosecution of individuals who violate your ordinance. I also request that you deny vehicle access to the river by placing rock boulders or concrete barriers in the area used by violators.

Sincerely yours,



Hank Smith  
Carmel River Steelhead Association



**MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT**

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August 16, 2005

Mr. Hank Smith  
P.O. Box 4076  
Monterey, CA 93942-4076

Dear Mr. Smith:

This will serve to acknowledge receipt of your letter of August 4, 2005 regarding a request that the District join with the California Department of Fish and Game, Monterey County Sheriff's Department and the National Marine Fisheries Service in taking action against individuals who operate vehicles illegally in the river bed of the Carmel River. The Board of Directors has received a copy of your letter.

I appreciate your bringing this matter to the District's attention. Because I'm not presently familiar with the subject matter you describe, I have referred your letter to Andy Bell, the District's Planning and Engineering Manager, for analysis and comment. You can expect that he will correspond with you in approximately three weeks regarding our response.

Again, thank you for writing to me on this subject.

Sincerely,

David A. Berger  
General Manager

pc: MPWMD Board of Directors  
Andy Bell

-----Original Message-----

**From:** Frank Kalauch [mailto:frankk@redshift.com]

**Sent:** Monday, August 08, 2005 3:41 PM

**To:** Henrietta Stern

**Subject:** water mismanagement

Thanks for your brochure but please pass on my feelings.

I AM TIRED ABOUT HEARING ABOUT COLLABORATION, IMPROVED UNDERSTANDING, MOVE FORWARD, IMPROVE, USER FRIENDLY, DEVELOPE, CATALYST, ETC. I HAVE LIVED HERE SINCE 1957 AND WE HAVE ALWAYS HAD A WATER SHORTAGE.

NO EXCUSES.....JUST GET SOMETHING DONE AND QUIT SHIRKING YOUR RESPONSIBILITY AND BOWING DOWN TO EVERY LITTLE SPECIAL INTEREST OR ENVIRONMENTAL GROUP WHO WANTS SAVE EVERY BLADE OF GRASS, TWIG OR LEAF.  
FRANKK-CARMEL

8/10/2005

-----Original Message-----

**From:** Henrietta Stern

**Sent:** Monday, August 08, 2005 3:59 PM

**To:** 'Frank Kalauch'

**Subject:** RE: water mismanagement

Hello Mr Kalauch-

Thank you for taking the time to read our newsletter and to write us. I hope you can attend the Aug 25, 2005 Town Hall meeting to learn about water supply projects that are being pursued, and pose questions directly to those in charge. The date/time info is on the first page of the newsletter.

As you requested, I did pass on your message to the General Manager, David Berger, and I asked that our Board members also receive a copy of your message.

Thanks again for writing.

# *Gardiner's Resort*

9  
RECEIVED

AUG 15 2005

MPWMD

10 August 2005

Mr. David Berger  
General Manager  
Monterey Peninsula Water  
Management District  
P.O. Box 85  
Monterey, Ca 93942

Dear David,

*I can truly say that you were a hit with the ladies and gentlemen, of the Historic Garden League. They are still talking about you and the fine presentation you gave. They had mention how nice it was, to have someone speak to them in layman terms. They felt that the MPWMD finally has someone, who simply stated that facts and gave a true sense of direction of the MPWMD goals. Job well done. Many of the league members will be attending, the workshop and meeting, at the Embassy Suites.*

*The Historic Garden League thanks you for taking your time and bringing some wonderful water devices, for them to use in their homes. It all makes a difference.*

*It was sorry to have missed lunch with you, but I'm sure our paths will cross again: and I will look forward to it. By the way...nice tie. Again, many thanks.*

Respectfully yours,

  
Monique Gardiner

# Coalition of Homeless Services Providers

Martinez Hall, 220 12<sup>th</sup> Street, Marina, CA 93933 Ph: (831) 883-3080 Fx: (831) 883-3085  
E-Mail: chspmontry@aol.com

RECEIVED

August 15, 2005

AUG 24 2005

MPWMD

**Member  
Agencies**

Catholic Charities  
Diocese of Monterey

Children's Services  
International

Community  
Human Services

Food Bank for  
Monterey County

Housing  
Advocacy Council

Housing Authority  
County of Monterey

Interim, Inc.

John XXIII AIDS Ministry

Shelter Outreach Plus

The Salvation Army  
Monterey Peninsula Corps

Sun Street Centers

**Associate  
Members**

Franciscan Workers of  
Junipero Serra

Habitat for Humanity  
of Monterey County

Unity Care Group

**Community  
Advisors**

Monterey County:

Department of  
Social Services  
and  
Office of Education

City of Marina

Sand City

City of Salinas

U.S. Department of  
Veterans Affairs

Monterey Peninsula Water Management District  
ATTN: Technical Advisory Committee  
P O Box 85  
Monterey, CA 93942-0085

Dear Committee Members,

The Coalition of Homeless Services Providers (CHSP) is a public benefit, non-profit corporation whose mission is to eliminate homelessness in Monterey County by promoting interagency coordination to develop and sustain a comprehensive system of housing and support services designed to maximize the self-sufficiency of individuals and families. There are twelve member agencies of the Coalition and three associate members and advisors.

As a collaborative we are seeking ways to increase the supply of affordable housing on the Monterey Peninsula since our agencies annually serve hundreds of low-income individuals in need of affordable housing. One of the options we are currently considering is the transfer of water credits to allow for more affordable housing. Our board of directors would like your committee to review our draft proposal:

*Water credit transfer proposal*

Purpose: In order to facilitate the development of more affordable housing on the Monterey Peninsula, the Coalition of Homeless Services Providers is proposing that the Rules and Regulations of the Water Peninsula Management District, revised November 2003, be modified.

Rule 28  
Item B

Current- Water use credits for existing water use may be transferred from one property to another for commercial and industrial connections.

Proposed – Water use credits for existing water use may be transferred from one property to another for the purpose of commercial and industrial connections or the development of affordable housing. The housing must be a transitional or permanent rental housing project, with 75% or more of the units designated as affordable for rental to individuals and families at 60% of State Median Income or less.





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August 31, 2005

Robin McCrae  
Coalition of Homeless Services Providers  
Martinez Hall  
220 12<sup>th</sup> Street  
Marina, CA 93933

Dear Ms. McCrae:

This will serve to acknowledge receipt of your August 15, 2005 letter to the District's Technical Advisory Committee (TAC), requesting that it consider your proposed amendments to the District's water credit transfer regulation to potentially increase the supply of affordable housing.

Copies of your letter will be distributed to the Chairperson and members of the TAC for their information. Copies of your letter also are being distributed to the District's Board of Directors, for their information. At the direction of the TAC Chairperson, your letter will be added to their next agenda as a communication received. As a standing committee of the District, under State open meeting law the TAC cannot discuss the substance of your request at this meeting unless one or more of its members requests that it be placed on a future TAC agenda. By copy of this letter, I have asked District staff to notify you of the date and time of the next TAC meeting.

Please contact Stephanie Pintar at 658-5630 if you have any questions or need further information.

Sincerely,

A handwritten signature in black ink, appearing to read "D. A. Berger".

David A. Berger  
General Manager

pc: Chair Foy and Board of Directors  
Chair Ingersoll and Technical Advisory Committee  
Stephanie Pintar, Water Demand Manager

townhall0825

From: walternclark@aol.com  
 Sent: Thursday, August 18, 2005 9:24 AM  
 To: townhall0825  
 Cc: mheditor@montereyherald.com

BOARD OF DIRECTORS  
 MONTEREY PENINSULA  
 WATER MANAGEMENT DISTRICT

SUBJECT: A QUESTION TO BE ANSWERED AT THE

BOARD'S

TOWN HALL MEETING on August 25

ABOUT THE DISTRICT'S USE OF FIXTURE UNITS

First a little background.

FIXTURE UNITS came into being decades ago when the first plumbing codes were being developed. At that time the various plumbing fixtures were assigned numbers which were used to determine the fee to be charged for the inspection services by the governmental body. #

In my opinion the use of the term FIXTURE UNITS have been subverted by your District, in that they are not used to determine the the difficulty of inspection, but to control the number of plumbing fixtures that can be installed in a house. And by this use, presumably a measure of the amount of water used by the various plumbing fixtures. ##

This is not an unreasonable use of the term, except the concept that the number of fixtures determines the amount water used, has a fatal flaw. As the number of fixtures is not the controlling factor: it is the number of people using them that determines the amount of water used.

At the May 16th meeting of your Board, Director Markey said "THE REASON FOR THE FIXTURE UNIT METHODOLOGY IS THAT IT LIMITS THE NUMBER OF PEOPLE THAT CAN LIVE IN A HOUSE" (my emphasis)

To quote the statement on page one of your Annual Report "The mission of the MPWMD is to manage, augment and protect water resources for the benefit of the community and the environment?"

NOW MY QUESTIONS

How does Director Markey's statement fit into the District's Mission? Does her statement indicate that the present Board may be using "FIXTURE UNIT METHODOLOGY" to limit growth on the Peninsula?

This is not only not part of your Board mission but appears to be a clear contravention of well-established constitutional principles that "restrictions can not be applied to hinder those in a familial relationship from living together" by local agencies. ###

# In Plumbing Codes the various plumbing fixtures are assigned fixture units based on the degree of difficulty in inspecting their installation. The inspection fee dollar amount is arrived at by multiplying the fixture unit value by a fixed dollar amount. A large city on the West Coast assigns 0.5 units for a drinking fountain inspection and maximum 4.0 for a toilet.

## Your District doesn't list a drinking fountain but does assign 0.5 units for a urinal, but only 1.7 units for a toilet. Obviously this is an attempt to indicate the amount of water used, not the difficulty of inspection.

### i.e. If someone has multiple family members living with them and

their number is such that multiple fixtures are necessary for their comfortable existence. (i.e. multiple showers, sinks and toilets are necessary each morning in lieu of requiring extensive standing in line. Regardless of the number of fixtures the amount of water use would be the same). Board Member Markey's philosophy would seem to deny them their legal right to live together in a comfortable and healthful style.



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August 26, 2005

Mr. Walter Clark  
8 Mescal Place  
Seaside, CA 93955

Dear Mr. Clark:

This will serve to acknowledge receipt of your e-mail of August 18, 2005 to the Board of Directors outlining your concerns about the District's fixture unit methodology.

I appreciate your bringing this matter to the District's attention. As a follow-up to your conversation with Director Kristi Markey at last night's Town Hall meeting, I'm referring your letter to our Water Demand Manager, Stephanie Pintar, for her review and comment. I have asked Ms. Pintar to specifically advise me if the District has provided an on-site water credit for the instant hot water system I understand was installed in your daughter's home. You can expect that I will write you again in approximately two weeks with our response; or I will provide you an estimate of when I'll be able to do so if the substance of your letter requires additional time for response.

Again, thank you for writing to our Board on this subject.

Sincerely,

David A. Berger  
General Manager

pc: MPWMD Board of Directors  
Stephanie Pintar  
David C. Laredo  
Donald Clark



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AUG 20 2005

MPWMD

Water officials,  
Monterey Peninsula:

Why don't you have the Army Corp of Engineers dredge the many years of built-up silt from our two reservoirs?

We would then have a greater capacity of water reserved, plus hazardous pressure against our dams would be relieved.

Is there a good reason why this is not feasible?

Respectfully,

Brookly Post Zeder  
Aug. 19, 2005



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WATER MANAGEMENT DISTRICT**

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## Facsimile Transmittal

<b>To:</b>	Dorothy Post Zeder	<b>Fax:</b>	625-1699
<b>From:</b>	David Berger Monterey Peninsula Water Management District	<b>Date:</b>	8/23/05
<b>Re:</b>	Proposal for Dredging Los Padres and San Clemente Reservoirs	<b>Pages:</b>	1

Ms. Zeder: This will serve to acknowledge receipt of your fax of August 20, 2005, regarding your suggestion that the Los Padres and San Clemente reservoirs be dredged to remove silt that has built up over many years.

I appreciate your bringing this matter to the District's attention. Because I'm not presently familiar with the subject matter you describe, I have referred your letter to our Project Manager, Henrietta Stern for analysis and comment. You can expect that I will write you again in approximately two weeks with our response; or I will provide you an estimate of when I'll be able to do so if the substance of your letter requires additional time for response.

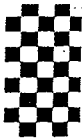
Again, thank you for writing to me on this subject.

Sincerely,

A handwritten signature in black ink, appearing to read "D.A. Berger".

David A. Berger  
General Manager

pc: MPWMD Board of Directors  
Henrietta Stern



THE LEAGUE  
OF WOMEN VOTERS  
OF THE MONTEREY PENINSULA

RECEIVED

AUG 24 2005

MPWMD

August 24, 2005

Larry Foy, Chair  
MPWMD Board of Directors  
P.O. Box 85  
Monterey, CA 93942

Subject: Town Hall Meeting on Water Supply Projects

Dear Mr. Foy and Members of the Board of Directors:

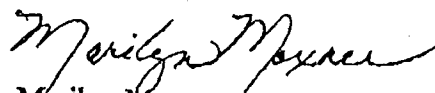
The League of Women Voters of the Monterey Peninsula studied water in 1982 and updated the study in 1995 and 2003. The League supports measures insuring an adequate supply of water; coordinating water resource planning with land use planning to provide for future needs without encouraging unsustainable growth; protecting the natural environmental in areas of both water origin and water use; and reserving stream flows for protection of fish, wildlife habitat, and the riparian environment. Additionally, we support policies that create a hierarchy of customers having a priority claim to water service with existing customers having the first priority.

We urge the Board to complete the work that was begun on the MPWMD long-term water supply/desalination project. If the environmental impacts of the project can be mitigated, it would address the immediate legal requirement of the State Water Resources Control Board to reduce pumping from the Carmel River.

The desal project combined with aquifer storage and recovery in the Seaside Basin could result in a long-term water supply that meets the needs of our community within existing natural resource and infrastructure constraints such as growing traffic congestion. Most importantly, we believe that a project that addresses the immediate needs of local residents has the greatest chance of community support and voter approval.

Finally, the League supports the requirement for voter approval for any major water supply project. Keeping in mind the need for an informed electorate, we recommend that one of the alternatives evaluated in the EIR for the MPWMD project be the Cal-Am proposal and that the EIR include a cost/benefit analysis of the alternatives.

Sincerely,

  
Marilyn Maxner  
President



**MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT**

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September 2, 2005

Marilyn Maxner  
The League of Women Voters  
Box 1995  
Monterey, CA 93942

Dear Ms. Maxner:

Thank you for the August 24, 2005 letter requesting that the District complete environmental review of the proposed 8,400 acre-feet per year MPWMD seawater desalination project. Copies of your letter will be provided to the Board of Directors. Your thoughtful comments will be considered in future water supply planning discussions.

Again, thank you for writing to us on this subject.

Sincerely,



Larry Foy  
Chair, MPWMD Board of Directors

pc: MPWMD Board of Directors  
Henrietta Stern, Project Manager



**townhall0825**

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**From:** Donald Clark [dclark110@cox.net]

**Sent:** Thursday, August 25, 2005 2:37 PM

**To:** David Berger; townhall0825

**Subject:** Letter for the Town Hall Meeting from Donald S. Clark: Supplement to Letter From Walter N. Clark

I've attached text and image versions of a letter, in connection with today's Town Hall Meeting, which constitutes a supplement to the letter filed by Walter N. Clark on August 18th. The letter requests, in particular, that the Board (1) reconsider its May 16 action with respect to the Application for Variance filed by Debra and Max Gramespacher, and grant the Application, and (2) modify the District's regulatory approach to address a number of Constitutional issues. Please provide copies to Chairman Foy and Vice-Chair Markey as soon as possible. Please call me at (703) 978-7126 if you have any questions. Thanks very much!

Donald S. Clark  
[dclark110@cox.net](mailto:dclark110@cox.net)

8/25/2005

9615 Bronte Drive  
Fairfax, Virginia

August 25, 2005

The Honorable Larry Foy, Chairman  
Board of Directors  
Monterey Peninsula Water Management District  
5 Harris Court, Building G  
Post Office Box 85  
Monterey, California 93942-0085

Subject: The Town Hall Meeting

Dear Mr. Chairman:

The Town Hall Meeting that the Board of Directors of the Monterey Peninsula Water Management District has scheduled should provide an excellent opportunity for members of the public to discuss with the Directors the manner in which the District carries out its responsibilities, and to suggest improvements. As a part of that process, I would like to raise two sets of issues -- general constitutional issues and more specific issues involving members of my family who live in Seaside -- and to request that the Board take certain steps to address those issues.<sup>1</sup> First, the regulatory approach that the District has developed and implemented to restrict water usage appears to conflict in a number of respects with important constitutional principles. Second, the District has applied that regulatory approach in a manner that appears to be inconsistent with the mission it has adopted, which is to "manage, augment and protect water resources for the benefit of the community and the environment." At a public hearing on May 16, 2005, the Board considered an Application for Variance filed by my sister, Debra Gramespacher, and her husband Max, for permission to install a shower in the upper level of their home, for the use of Debra's and my father, Mr. Walter N. Clark. Although permitting the installation of the shower would save the District an estimated 500 gallons of water each year, the Board nevertheless denied the Application.

### **Constitutional Issues**

The Fifth Amendment to the United States Constitution provides that no person shall "be deprived of life, liberty, or property, without due process of law; . . ." and the Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law; . . ." The Supreme Court has determined in particular that the right to privacy "is founded in the Fourteenth Amendment's concept of personal liberty and restrictions

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<sup>1</sup> This letter constitutes a supplement to the letter and question that my Dad, Mr. Walter N. Clark, filed with the District in connection with the Town Hall Meeting on August 18, 2005.

The Honorable Larry Foy, Chairman -- Page 2

upon state action . . . .”<sup>2</sup> The Court has more recently confirmed that “. . . our laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education,”<sup>3</sup> and that “the Constitution protects the sanctity of the family.”<sup>4</sup> The Court has therefore determined that State and local governments cannot restrict -- whether through zoning ordinances or otherwise -- the number of related people who live together.<sup>5</sup> Lower courts have relied on that principle to conclude, more particularly, that “[z]oning restrictions cannot be applied to hinder those in a familial relationship from living together.”<sup>6</sup>

The District has for many years nevertheless relied on a water permit process -- based on the “fixture unit” methodology -- which has precisely these unconstitutional effects; that is, it prevents families from installing and using the washbasins, showers, bathtubs, commodes, kitchen sinks, dishwashers, and other water fixtures they need in order to live together.<sup>7</sup> In 2004 the Board reaffirmed District reliance on the water permit process and the fixture unit methodology embodied in District Rule 24 when it adopted Ordinance 111, which amended Rule 24 in certain respects. As the letter filed by my father clearly establishes, however, it does not make sense to rely on fixture units as a measure of actual water consumption. Fixture units were developed as a means of estimating the amount of time needed to conduct plumbing code

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<sup>2</sup> *Roe v. Wade*, 410 U.S. 113, 153 (1973).

<sup>3</sup> *Lawrence v. Texas*, 539 U.S. 558, 574 (2003), citing *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 851 (1992); accord, e.g., *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494, 499 (1977) (plurality opinion); *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639-640 (1974).

<sup>4</sup> *Moore v. City of East Cleveland, Ohio*, 431 U.S. at 503 (plurality opinion).

<sup>5</sup> *Moore v. City of East Cleveland, Ohio*, 431 U.S. at 498-99 (plurality opinion) and 520 (opinion of Stevens, J., concurring in the judgment); accord, e.g., *Doe v. City of Butler, Pennsylvania*, 892 F.2d 315, 321 (“. . . the City of Butler, no matter how valid its density concerns, could not constitutionally limit the number of related persons living together.”). See also *Village of Belle Terre v. Boraas*, 416 U.S. 1, 8-9 (1974), where the Supreme Court, in sustaining the zoning ordinance at issue, relied in part on the fact that the ordinance did not prevent either related people or up to two unrelated people from living together.

<sup>6</sup> *Doe v. City of Butler, Pennsylvania*, 892 F.2d at 321; accord, e.g., *Jones v. Wildgen*, 320 F. Supp. 2d 1116, 1131-32 note 8 (D. Kansas 2004).

<sup>7</sup> This regulatory approach does not appear to be required by or otherwise arise from the statute that created the District -- the Monterey Peninsula Water Management District Law -- because that statute does not include any reference either to the use of a water permit process or to the fixture unit methodology.

The Honorable Larry Foy, Chairman -- Page 3

inspections of different types of water fixtures -- and the consequent fees to be charged for such inspections -- and were never intended to serve as a measure of fixture water consumption. As a result, there is not necessarily any connection between the number of fixture units assigned to a particular type of water fixture and the actual level of water consumption to which the installation of that fixture will lead. Thus, for example, Ordinance 111 assigns one fixture unit to a swimming pool for "each 100 square-foot of pool surface area" without making any allowance for the fact that the pool will consume three times more water if it is six feet deep than if it is two feet deep. Moreover, Ordinance 111 assigns zero fixture units to a variety of other outdoor water fixtures that may lead to far greater water usage than any indoor fixture, including "fountains, ponds, hot tub/spas, drinking fountains, pot fillers, darkroom sinks, outdoor showers, outdoor sinks, pet/livestock wash racks and water troughs, and multiple utility sinks."<sup>8</sup>

The Board itself has recognized these problems with the fixture unit approach. Thus, when the Board prescribed an earlier set of residential water fixture unit values in April 2001 -- through the adoption of Ordinance 98 -- it expressly and correctly found that "actual water use may vary from the theoretic capacity for water use" denominated by "fixture unit methodology."<sup>9</sup> The Board therefore determined that the installation of certain fixtures should be approved without considering their respective fixture unit designations.<sup>10</sup> The Board had previously concluded that residents could add a second wash basin -- and either a bathtub or a separate shower -- to a master bathroom without attributing any fixture units to those fixtures.<sup>11</sup> As a part of Ordinance 98, the Board extended the same treatment to "the addition of a second bathroom in any existing residence," because

the addition of a second bath to an existing residence is primarily for the purpose of convenience. These added water appliances shall not significantly cause additional water demand.<sup>12</sup>

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<sup>8</sup> Instead, Ordinance 111 appears to assign a total fixture unit value of "50% total interior fixture units" to all outdoor water uses on a particular lot (10,000 square feet or less in size), regardless of how much water each such type of fixture may actually consume.

<sup>9</sup> See *Final Ordinance No. 98 of the Monterey Peninsula Water Management District Amending Residential Water Fixture Unit Values* (adopted April 16, 2001), Finding 3.

<sup>10</sup> *Id.*, Finding 4.

<sup>11</sup> The Board reached this conclusion because "these extra water appliances are typically added to a master bath for the purpose of aesthetics or convenience, [and] do not significantly cause additional water demand." *Id.*

<sup>12</sup> *Id.*, Finding 5.

The Honorable Larry Foy, Chairman -- Page 4

As amended by Ordinance 98, Rule 24[C] therefore provides, in relevant part, that “[u]nder this second bathroom special accounting protocol, the General Manager shall not debit the municipal allocation for the installation of select water fixtures in the second bathroom addition or remodel.”

The cases cited above make it clear that the United States Constitution prevents State and local government entities such as the District from adopting any rule or ordinance that directly limits the number of related people who can live in any house within its jurisdiction.<sup>13</sup> It is equally clear that the District cannot attempt to accomplish indirectly what it cannot effectuate directly; that is, to use restrictions based on fixture unit calculations to limit the number of related people who can live in a house. At the May 16 hearing, however, The Honorable Kristi Markey, the Vice-Chair of the Board, stated that “the reason for the fixture unit methodology is that it limits the number of people that can live in a house. . . .” This purpose and this effect are clearly unconstitutional as applied to related people who live together. They are also arguably unconstitutional as applied to unrelated people who live together, given the lack of connection between the number of fixture units assigned to any particular water fixture and the amount of water the fixture actually consumes. As a consequence, any effort by the District to enforce its current fixture unit restrictions is arguably unconstitutional, because it apparently has both the purpose and the effect of limiting “the number of people that can live in a house.”

#### **Issues Arising From Application of the Fixture Unit Approach**

As noted above, at the May 16 hearing, the Board denied an Application for Variance filed by my sister, Debra Gramespacher, and her husband Max, for permission to install a shower in the upper level of their home.<sup>14</sup> The shower was to be used by Debra’s and my 81-year-old father, Walter N. Clark -- who now resides in the upper level -- so that he could take a shower without having to walk downstairs. Debra and Max had already spent more than \$5,000 replacing a variety of different water fixtures in an effort to secure enough “fixture unit credits” to satisfy District requirements. Moreover, their Application made it clear that as a consequence of the water conservation steps they had already taken, permitting the placement of the shower upstairs would actually save the District approximately 500 gallons of water per year.<sup>15</sup>

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<sup>13</sup> Section 256 of the Monterey Peninsula Water Management District Law itself recognizes this principle by providing that the Board “may by ordinance adopt reasonable rules and regulations to carry out its powers and duties *not inconsistent with [the District Law] or any other law . . .*”

<sup>14</sup> A copy of the Application for Variance is attached to this letter.

<sup>15</sup> The upstairs level is connected to an instant-access hot water system, while the shower our father now must use on the lower level is not. As a result, permitting the installation of a shower on the upstairs level would save an estimated 500 gallons of water per year.

The Honorable Larry Foy, Chairman -- Page 5

Furthermore, their Application clearly satisfied all three criteria for granting a Variance.<sup>16</sup> For these reasons, Debra, Max, my Dad and I therefore all hoped that the Board would approve the Application. Unfortunately, however, the Board instead denied the Application, because Debra and Max were in their view still short approximately one-half to one fixture unit credit.

The May 16 decision was made on the basis of the fixture unit methodology, and the reason the District relies on that methodology is apparently because it "limits the number of people that can live in a house . . ." The District cannot, however, constitutionally limit the number of related people who live together, or "hinder those in a familial relationship from living together," and it therefore cannot rely on a regulatory approach, such as the fixture unit methodology, which has those unconstitutional effects. Moreover, the fixture unit methodology produces inconsistent and anomalous effects. Thus, for example, as a consequence of the master bathroom exception, Debra and Max apparently can add a separate shower stall to one of the bathrooms on the lower level without needing any fixture unit credits, and without occasioning any debiting of the Seaside water allocation. Placing the shower stall on the lower level, however, would not help our Dad, because he would still need to walk downstairs to use it. The May 16 denial of the Application prevents Debra and Max from placing precisely the same shower stall on the upper level, where it is needed.

### **Conclusion**

For the foregoing reasons -- and to remedy the problems with the current regulatory approach -- I request that the Board now take the following actions:

1. Reconsider the decision it made at the May 16 hearing and now grant the Application for Variance filed by Debra and Max Gramespacher. Granting the Application will of course eliminate the problems arising from reliance on the fixture unit methodology. Moreover, granting the Application will save District residents an estimated 500 gallons of water each year, precisely as the "protecting water resources" component of the District mission requires.
2. Amend the District fixture unit designations, in District Rule 24 and wherever else they appear, to change the fixture unit values assigned to all residential interior water fixtures -- and hence debited against municipal allocations -- to zero. With this change, all Monterey County

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<sup>16</sup>

A copy of the Application for Variance is attached to this letter.

The Honorable Larry Foy, Chairman -- Page 6

residents would be free to add as many interior water fixtures as their families need to live together, and the constitutional problems arising from the current regulatory approach would be eliminated.

Thank you for considering this letter and these two requests.

Sincerely,

Donald S. Clark  
[dclark110@cox.net](mailto:dclark110@cox.net)

cc The Honorable Kristi Markey, Vice-Chair  
Board of Directors

David Berger, General Manager  
Monterey Peninsula Water Management District

Brenda Moore, Interim Editor  
Monterey Herald

Debra and Max Gramespacher  
8 Mescal Place  
Seaside, California 93955

March 7, 2005

Members of the Board of Directors  
Monterey Peninsula Water Management District  
5 Harris Court, Building G  
Post Office Box 85  
Monterey, California 93942-0085

Re: *Application for Variance and Appeal from Decision Concerning  
Application of Debra and Max Gramespacher to Amend Water Permit  
No. 20676  
8 Mescal Place Seaside, California 93955*

Dear Members of the Board:

On December 4, 2004, my husband and I filed an Application to amend the above Water Permit (Exhibit 3) so that we can provide a shower for my father in the upstairs Addition in which he will shortly reside. By letter dated January 19, 2005, a District Conservation Representative declined to approve the Application. On February 1, 2005, we filed a timely Appeal from that decision with the District, and paid the requisite \$250 fee. On February 25, 2005, the District Water Demand Manager issued a letter suggesting that the Appeal constitutes a request for a policy change that "must be initiated at the policy level before the District Board of Directors;" advising that an Application for Variance could be substituted for the Appeal; and stating that the District will apply the previously paid \$250 fee to the Application for Variance.

We are today filing the enclosed Application for Variance, which incorporates by reference both our December 4, 2004 Application to Amend Water Permit No. 20676 and our February 1, 2005 Appeal. While we take no position on the suggestion in the February 25 letter that the February 1, 2005 filing constitutes a request for a policy change rather than an Appeal, the relief we request from the Board of Directors is the same regardless of how our filings are characterized. We simply ask that the Board of Directors approve the installation of a shower for my father in the upstairs Addition to our home.

The District has determined, as the Application for Variance itself indicates, that a variance may be approved

when a) special circumstances exist . . . ; b) when strict interpretation and enforcement of any standard would cause undue hardship; and c) when the granting of such a variance will not tend to defeat the purpose of the Rules and Regulations.

All three of these criteria are clearly satisfied in this case.

First, special circumstances warrant approval of the proposed shower installation without attributing any fixture units to the shower. When the District prescribed residential water fixture unit values in April 2001 – through the adoption of Ordinance 98 – it expressly and correctly found that "actual water use may vary from



the theoretic capacity for water use" denominated by "fixture unit methodology."<sup>1</sup> The District therefore determined that applications for certain sets of fixtures should be accorded "special circumstance" treatment; that is, they should be approved without attributing any fixture units to the fixtures covered by the applications.<sup>2</sup> The District had previously determined that (1) "the addition of a second wash basin in a master bath" and (2) "use of both a tub and separate shower in a master bath" warranted this type of special circumstance treatment, because "these extra water appliances are typically added to a master bath for the purpose of aesthetics or convenience, [and] do not significantly cause additional water demand."<sup>3</sup>

Through Ordinance 98, the District determined to extend the same treatment to "the addition of a second bathroom in any existing residence,"<sup>4</sup> because

the addition of a second bath to an existing residence is primarily for the purpose of convenience. These added water appliances shall not significantly cause additional water demand.<sup>5</sup>

As amended by Ordinance 98, Rule 24 C (1) therefore provides, in relevant part, that "under this second bathroom special accounting protocol, the General Manager shall not debit the municipal allocation for the installation of select water fixtures in the second bathroom addition or remodel."

For precisely the same special circumstance reasons, we should be permitted to add a shower to the half-bathroom in the upstairs Addition without attributing any fixture units to that installation. Adding the shower will not produce any additional water demand, because if the shower cannot be installed, my father will have to use an existing shower on the downstairs floor of our home. In fact, as shown below, the steps we have taken in conjunction with the proposed shower installation will actually produce a substantial reduction in water demand and usage.

**Second**, strict interpretation and enforcement of the fixture unit methodology in this case clearly would cause undue hardship. My father is 81 years old, and his health conditions arguably make it necessary (rather than simply more convenient) for him to be able to take showers in the upstairs Addition rather than downstairs. If we are not permitted to install a shower in the Addition, then my father will have to travel approximately 100 feet, and down and up a stair flight of 14 steps, each day in order to take his daily shower. This would clearly constitute an undue hardship; indeed, it would be a completely unwarranted hardship given the substantial reduction in water usage which will actually be effected.

**Third**, Board approval of the requested variance by permitting the requested shower installation will not in any way defeat the purpose of the District's Rules and Regulations; in fact, the steps my husband and I have already taken will substantially advance that purpose. The Mission of the District is of course, *inter alia*, to "augment and protect water resources . . . ." As noted above, the new shower will not result in any

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<sup>1</sup> See Final Ordinance No. 98 of the Monterey Peninsula Water Management District Amending Residential Water Fixture Unit Values (adopted April 16, 2001), Finding 3.

<sup>2</sup> *Id.*, Finding 4.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*, Finding 5 (emphasis added).

additional water consumption whatsoever, because my father will take the same number of showers, whether in the upstairs addition or downstairs.

Moreover, as a consequence of the more than \$5,000 which we have already spent on water conservation measures, as required by the District, and other actions we have taken with respect to our property, it can be argued that we are entitled to a total of 1.4 fixture unit credits, which we are willing to allocate to this project. This total includes not only the 0.4 credit described in our Application but, arguably under the GRANDFATHER<sup>1</sup> concept, an additional 1.0 fixture unit credit which we should have received when we moved into our home in 1998, for disabling a hot tub located on the property. At that time, we were advised that that action would entitle us to a fixture unit credit, which we would be able to use to cover additional indoor water fixtures. Instead of continuing to use the hot tub with its need for water, we have now completely removed it to make room for the Addition, and the water savings produced by that action are therefore permanent. A rule change effective in 2000, after we disabled the hot tub, apparently suggests that disabling outdoor fixtures no longer produces indoor fixture unit credits. However, that rule change, as mentioned above, under the GRANDFATHER concept, should not deprive us of the 1 fixture unit credit we earned before the change was made.

Furthermore, in addition to the above actions, we have already installed an instant access hot water system, with its own water heater, in the Addition. As a consequence, both the wash basin and the shower in the Addition will use considerably less water than if my father were instead to have to take showers in the lower floor of the residence, which does not currently have an instant access hot water system. Under present permit conditions, each of the existing showers, and each of the existing wash basins, uses approximately 1.25 gallons of cold water before the hot water arrives. If the proposed shower is installed in the Addition – and one assumes, conservatively, that the new shower and the addition wash basin will each be used one time per day – then the instant access hot water system is likely to save approximately 2.5 gallons of water per day, and approximately 1,000 gallons of water per year. Moreover, use of the new shower alone is likely to save approximately 1.25 gallons of water per day, and approximately 500 gallons of water per year.

For the foregoing reasons, we request that the Board of Directors approve our Application for Variance and permit us to install a shower for my father in the upstairs Addition to our home. Thank you for your assistance.

Sincerely,



Debra Gramespacher

P.S. Attached is a listing of the sequence of actions that we have taken to comply with the District's rules.

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<sup>1</sup> This concept is the provision that an existing situation may be exempt from new rules and regulations



**MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT**

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5 HARRIS COURT, BLDG. G  
POST OFFICE BOX 85  
MONTEREY, CA 93942-0085 • (831) 658-5600  
FAX (831) 644-9560 • <http://www.mpwmd.dsf.ca.us>

August 26, 2005

Mr. Donald S. Clark  
9615 Bronte Drive  
Fairfax, VA 22032-3903

Dear Mr. Clark:

This will serve to acknowledge receipt of your August 25, 2005 email that contained letters dated August 25 and March 7, 2005 regarding the MPWMD Board of Directors' denial of the Application for Variance filed by Debra and Max Gramespacher. In the letter, you allege that the District's fixture unit methodology is unconstitutional.

I appreciate your bringing this matter to the District's attention. Because I'm not presently familiar with the subject matter you describe, I have referred your letter to District Counsel, David C. Laredo, for analysis and comment. You can expect that I will write you again in approximately two weeks with our response; or I will provide you an estimate of when I'll be able to do so if the substance of your letter requires additional time for response.

Again, thank you for writing to me on this subject.

Sincerely,

A handwritten signature in black ink, appearing to read "D.A. Berger".

David A. Berger  
General Manager

pc: MPWMD Board of Directors  
Stephanie Pintar  
David C. Laredo  
Walter Clark

Anthony L. Lombardo  
 Jeffrey R. Gilles  
 Derinda L. Messinger  
 James W. Sullivan  
 Jacqueline M. Zichke  
 Steven D. Pontrose  
 E. Soren Diaz  
 Sheri L. Damon  
 Virginia A. Hines  
 Patrick S.M. Casey  
 Paul W. Munkitof  
 Bradley W. Sullivan  
 Miriam Schakal  
 Kelly McCarthy Sutherland

**Lombardo & Gilles**  
 A PROFESSIONAL LAW CORPORATION  
 ATTORNEYS AT LAW

318 Cayuga Street  
 P.O. Box 2119  
 Salinas, CA 97022-2119  
 831-754-2444 (SALINAS)  
 888-751-7444 (NATIONWIDE)  
 831-754-2011 (FAX)

225 Sixth Street  
 Hollister, CA 95023  
 831-630-9441

File No.: 0197.023

August 30, 2005

VIA FACSIMILE

RECEIVED

AUG 30 2005

MPWMD

Mr. David Berger, General Manager  
 Monterey Peninsula Water Management District  
 Post Office Box 85  
 Monterey, CA 93940

Re: Quail Lodge Water Credit Determination

Dear Mr. Berger:

Our firm received a letter dated August 15, 2005 (a copy of which is attached) responding to our request on behalf of Quail Lodge for a water credit determination.

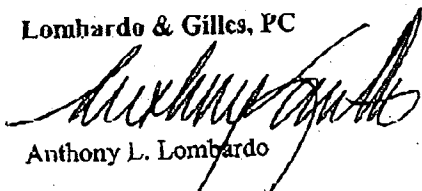
There is one aspect of that water credit determination with which the applicant does not concur and this involves the landscaping at Quail Lodge. The letter is accurate in that the landscaping was redone at Quail Lodge, however it was redone with low water use and draught tolerant landscaping and large amounts of lawn area removed.

Rather than appeal this matter at this time, my client would prefer to work with you to review the landscape issue at Quail Lodge in hopes of possibly avoiding an unnecessary appeal.

Please let me know if you are willing to reconsider this issue in light of additional information regarding all landscaping rather than requiring us to file an appeal immediately.

Sincerely,

Lombardo & Gilles, PC



Anthony L. Lombardo

ALL:rp

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Ms. Miriam Schakat, Esquire  
August 15, 2005  
Page 2

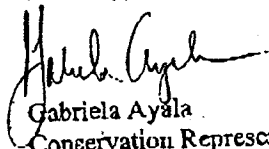
**Landscaping**

Staff reviewed aerial photos of Quail Lodge from July 1996 and July 1994 and compared them with aerial photos taken in July 2004, after the remodel. It appears that there is new landscaping near the Lodge and Clubhouse. Therefore, the District will not grant any credit for the landscaping portion of the remodel.

The water credit determination shown in this letter is a final determination of the Water District's General Manager. Final determinations of the General Manager may be appealed to the District Board within twenty-one (21) days after any such determination pursuant to District Rule 70.

For information about this letter or the appeal process, contact the District office at 658-5601.

Sincerely,



Gabriela Ayala  
Conservation Representative

cc: David A. Berger, General Manager

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**MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT**

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5 HARRIS COURT, BLDG. G  
POST OFFICE BOX 85  
MONTEREY, CA 93942-0085 • (831) 658-5600  
FAX (831) 644-9560 • <http://www.mpwmd.dst.ca.us>

August 31, 2005

Anthony L. Lombardo  
Lombardo & Gilles  
P.O. Box 2119  
Salinas, CA 93902-2119

Dear Mr. Lombardo:

This will serve to acknowledge receipt of your letter dated August 30, 2005, regarding the District's August 15, 2005 determination of water credits for Quail Lodge.

In response to your request, District staff is willing to meet with you and your client to review documentation or other verifiable information on landscaping alterations done at Quail Lodge not previously made available to my staff, that potentially could form a basis for the District to grant a landscaping water credit. Meanwhile, I would suggest that you consider filing an appeal to my earlier determination prior to the 21-day deadline, or September 5, 2005. There is no time limit in District regulations by which the Board must hear an appeal, so it can be held in abeyance pending the outcome of any further discussion with your client and you on this subject at the staff level.

Please contact my Executive Assistant, Arlene Tavani at 658-5652 if you and your client have new data and information that you would like to review in a meeting with District staff.

Sincerely,

A handwritten signature in black ink, appearing to read 'D.A. Berger'. The signature is fluid and cursive, with a long horizontal stroke at the end.

David A. Berger  
General Manager

pc: MPWMD Board of Directors  
Stephanie Pintar  
Gabiella Ayala