



Supplement to 7/18/11 MPWMD Board Packet

Attached are copies of letters received between June 15, 2011 and July 8, 2011. These letters are also listed in the July 18, 2011 Board packet under item 24, Letters Received.

Author	Addressee	Date	Topic
Tim Miller	David Laredo	5/26/2011	MPWMD Draft Resolution 2011-09
Luis A. Alejo	Bob Brower	6/8/2011	Letter of Thanks for Service to the MPWMD
George T. Riley	Brenda Lewis	6/13/2011	Appointment to Carmel River Advisory Committee
Ron Weitzman	MPWMD Board	6/20/2011	Petition -- Water-Plus Proposal that MPWMD Purchase California American Water's Monterey District

U:\staff\word\boardpacket\2011\20110718\LettersRecd\supplement.docx



Received at 5/26/11
Board Meeting

Timothy J. Miller
1033 B Avenue
Suite 200
Coronado, CA 92118
tim.miller@amwater.com

P 619.435.7411
F 619.435.7434

Item 2

May 26, 2011

David C. Laredo
MPWMD District Counsel
De Lay & Laredo
606 Forest Ave.
Pacific Grove, CA 93950

Re: MPWMD Draft Resolution 2011-09

Dear Mr. Laredo:

INTRODUCTION

Thank you for providing me with a draft of Monterey Peninsula Water Management District ("District") Resolution 2011-09 and the supporting staff note relating to the collection and remittance of the User Fee. California American Water has reviewed the draft resolution and staff note. We understand that Resolution 2011-09 is being offered in response to various decisions of the California Public Utilities Commission ("CPUC") relating to the User Fee to ensure the District is not subject to various legal claims or defenses should litigation be required to address those CPUC decisions. We note at the outset that we have been working cooperatively with the District at all levels to address those CPUC decisions and the programs historically funded by the User Fee. As discussed in our telephone conference yesterday, California American Water is submitting this letter to you to satisfy our obligation to exhaust our administrative remedies should it be necessary for California American Water to litigate the District's action on Resolution 2011-09. We, nevertheless, remain committed to our cooperative efforts with the District.

We understand that the operative language of Resolution 2011-09 is to "order California American Water to collect and remit to the District the Water Distribution System User Fee as required by District Ordinance 123."¹ Accordingly, we infer from that language that the intent of Resolution 2011-09 is not to change any aspect of Ordinance 123 in terms of ultimate responsibility for the User Fee; i.e., this Ordinance neither imposes the User Fee directly on California American Water in lieu of California American Water's

¹ Our comments are limited to the text of Resolution 2011-09 provided to us at 8:03 a.m. on May 23, 2011. This letter does not address subsequent changes to the Resolution.

David Laredo, District Counsel
Monterey Peninsula Water Management District
May 26, 2011
Page 2 of 4

customers, nor requires California American Water to remit the User Fee regardless of whether California American Water is authorized by the CPUC to collect the User Fee. The ultimate liability for the User Fee under Ordinance 123, if Resolution 2011-09 is passed, would remain with our customers.

If our understanding of this resolution is incorrect, and it is the District's intent to require California American Water to collect the User Fee to the District without CPUC authorization to collect the User Fee or to require California American Water to remit payment without first collecting the funds from our customers, we offer the following additional factual information and comments regarding draft Resolution 2011-09.

If there is some other purpose for Resolution 2011-09, we respectfully request an explanation of the purposes of Resolution 2011-09 and that the District Board delay action on this proposed resolution until California American Water can evaluate and comment on the purposes of Resolution 2011-09 as clarified.

ADDITIONAL FACTUAL BACKGROUND

Subsequent to the CPUC issuing D.11-03-035, California American Water has met on multiple occasions with MPWMD staff and District Counsel to discuss how to proceed in light of the CPUC's decision. As respects ASR, California American Water, District staff and District counsel discussed an arrangement whereby California American Water would acquire the assets, close the current funding gap, and obtain the necessary funding to construct ASR Well #4. This proposal had numerous advantages, including resolving longstanding complications with the California Department of Public Health related to the use of the ASR wells to recover water from the Seaside Basin.

As respects the Mitigation Program, subsequent to the CPUC issuing a draft order in the User Fee proceeding, California American Water requested District staff to provide California American Water with a budget to implement the Mitigation Program to ensure the requirements of Order 95-10 were met. That budget was incorporated into the *Interim Implementation Agreement for 2011-2012 Carmel River Mitigation Program*, which the District Board approved on May 16, 2011. The purpose of that agreement as stated therein is: "To ensure the Mitigation Program required by Order 95-10 continues pending a decision by the CPUC on California American Water's amended application regarding the User Fee."

COMMENTS ON DRAFT RESOLUTION 2011-09

With the above-described purpose in mind and in consideration of the additional facts, we offer the following comments on the draft resolution and staff note:

1. Resolution 2011-09 imposes on California American Water obligations that are inconsistent with California Public Utilities Commission Decisions 09-07-021 and 11-03-035 and may be preempted by Constitutional powers of the CPUC.
2. Resolution 2011-09 and the Staff Note omit relevant information regarding the *Interim Implementation Agreement for 2011-2012 Carmel River Mitigation Program* and therefore inaccurately describes the current funding available for

David Laredo, District Counsel
Monterey Peninsula Water Management District
May 26, 2011
Page 3 of 4

the Mitigation Program, and accordingly whether the obligations under Order 95-10 are met.

- 3. The District has failed to evaluate any alternative method of collecting the User Fee or all reasonable methods of funding the ASR Project.
- 4. Requiring California American Water to pay the User Fee without regard to our authority to recover these costs could be a taking in violation of the California and United States Constitutions.
- 5. Resolution 2011-09 combined with the *Interim Implementation Agreement for 2011-2012 Carmel River Mitigation Program* may exceed the funding authorized pursuant to Ordinance 123.
- 6. Resolution 2011-09 may exceed the scope of Ordinance 123 if the 8.325 percent User Fee funds new capital improvements instead of merely "[maintaining] plant, equipment, facilities, supplies, personnel and reasonable reserves necessary to provide water service."
- 7. Resolution 2011-09 exceeds the scope of Ordinance 123 to the extent it seeks to order the remittance of more than 1.2 percent of California American Water's water and related charges.
- 8. Ordinance 123, as interpreted by Resolution 2011-09, may be void for vagueness because Ordinance 123 does not clearly set forth the obligation of California American Water that Resolution 2011-09 purports to enforce.
- 9. Resolution 2011-09 also states that California American Water's operations in the Seaside Groundwater Basin are adversely affecting steelhead and the California Red Legged Frog. California American Water is aware of no report finding that pumping water from the Seaside Basin affects steelhead or frogs.
- 10. Resolution 2011-09 inaccurately characterizes the purposes of the Mitigation Program because the CEQA project that requires the Mitigation Program is the District's Water Allocation Program, not an approval requested by California American Water.
- 11. Resolution 2011-09 imposes obligations on California American Water that it has no authority to implement because it requires California American Water to "set" the User Fee.

Based on the foregoing, adopting Resolution 2011-09 would be arbitrary and capricious and an abuse of discretion by the District Board. It would also create a controversy regarding California American Water's rights and duties under Resolution 2011-09 and CPUC decisions D.09-07-021 and D.11-03-035. California American Water respectfully requests that the District refrain from acting on Resolution 2011-09 at this time. If the District determines that it must persist on this course, the District Board should not act on Resolution 2011-09 as currently drafted or based on the existing staff note, but should send the matter back to staff for revisions and explanations consistent with our comments. California American Water also requests that we further discuss the

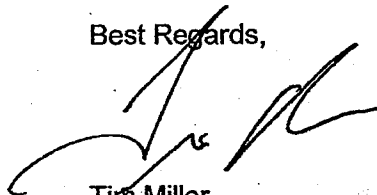
California American Water, 1033 B Avenue, Suite 200, Coronado, CA 92118

David Laredo, District Counsel
Monterey Peninsula Water Management District
May 26, 2011
Page 4 of 4

District's concerns that have led to this course of action to determine if those concerns could be addressed short of this order.

We look forward to continuing the cooperative spirit of our efforts to maintain the Mitigation and ASR Program. Please direct any questions regarding this letter to my attention.

Best Regards,

A handwritten signature in black ink, appearing to read 'Tim Miller', is written over the typed name.

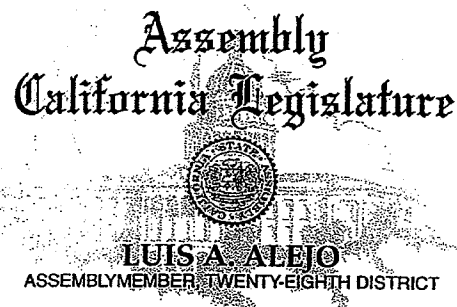
Tim Miller
Corporate Counsel

cc: Robert MacLean
Darby Fuerst
Edward Simon
Craig Anthony

STATE CAPITOL
 P.O. BOX 942849
 SACRAMENTO, CA 94249-0028
 (916) 319-2028
 FAX (916) 319-2128

DISTRICT OFFICE
 100 WEST ALISAL STREET, SUITE 134
 SALINAS, CA 93901
 (831) 759-8676
 FAX (831) 759-2961

E-MAIL
 Assemblymember.Alejo@assembly.ca.gov



COMMITTEES
 VICE CHAIR: LOCAL GOVERNMENT
 BUDGET
 BUDGET SUBCOMMITTEE #5, PUBLIC SAFETY
 LABOR AND EMPLOYMENT RULES

JOINT COMMITTEES
 LEGISLATIVE AUDIT RULES

SELECT COMMITTEES
 CALIFORNIA-MEXICO BI-NATIONAL AFFAIRS
 DELINQUENCY PREVENTION AND YOUTH DEVELOPMENT
 HIGH TECHNOLOGY
 HIGH SPEED RAIL FOR CALIFORNIA
 REGIONAL APPROACHES TO ADDRESSING THE STATE'S WATER CRISIS
 STATE HOSPITAL SAFETY
 SUSTAINABLE AND ORGANIC AGRICULTURE

June 8, 2011

Mr. Bob Brower, Chair, Board of Directors
 Monterey Peninsula Water Management District
 5 Harris Court, Building G
 P.O. Box 85
 Monterey, CA 93942-0085

RECEIVED
 JUN 16 2011
 MPWMD

Dear Chairman Brower,

Thank you for your continued service and dedication to the people of the Monterey Peninsula. I commend the Board, management, and all of the hard working employees of the Monterey Peninsula Water Management District (MPWMD) for your diligence in ensuring that the public's water resources are secure and well-protected. Your efforts are appreciated and valued.

It is organizations like yours that truly impact and make a difference in our communities. I look forward to working with the MPWMD on many issues including the management of the local water supply, water conservation efforts, and maintaining the recreation of the Monterey Peninsula and in the Carmel River basin.

Please feel free to contact me or my staff anytime to discuss issues of importance that affect your water district. Again, thank you for your involvement and leadership in our communities.

Sincerely,

LUIS A. ALEJO
 Assemblymember
 28th District



RECEIVED

JUN 16 2011

MPWMD

GEORGE T. RILEY
1198 CASTRO ROAD
MONTEREY CA 93940

June 13, 2011

Director Brenda Lewis,
Monterey Peninsula Water Management District
5 Harris Court, Building G, Monterey CA 93940

Dear Brenda,

First, congratulations all over again. It feels good to address you as Director Lewis. I hope you are finding a comfort zone at this early stage. Your intellect and skepticism should serve you well to balance the competing issues you will face. I hope your independence and principles will solidify the soundness of WMD deliberations and decisions. I wish you well.

Second, I hope my opinions are not held against me. Although we differed at the end of the campaign, I continued to work for your success, including working the phones up until early afternoon on Election Day. Maybe one day the time will evolve that we can talk just so there is no baggage between us. I hope we might do that before too long.

Third, I normally make my opinions known in public settings and at public meetings. The only time I do things privately is when the issue is private, although it will have public interest implications. That is the main purpose of this letter, to comment on an appointment.

I heard you have an appointment to make to the Carmel River Advisory Committee, and that one candidate is Margaret Robbins. I do not know other candidates you may be considering. But I do know Margaret, and I think she would be a solid appointment by you and a solid addition to the CRAC.

I know Margaret mainly from my 9 years with the League of Women Voters and the committee on Natural Resources. Margaret is truly a public interest advocate in all the best meanings of that concept. She is smart. She does her research. She tracks down facts and political relationships. She shows up for meetings. She asks questions, chases to clarify vague responses, looks for options for reasonable approaches, and is well spoken. She interacts well in groups, and is always prepared. She is relentless in pursuing the broad principles of public access, public input, public participation, and public awareness.

She carries the broad view that Carmel Valley is a political pawn. Since there is no government structure to oversee Carmel Valley, active citizen engagement is the only option. Margaret is excellent at this.

She would be a great link for you to have into Carmel Valley.

Respectfully,



TO THE DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT:

Received at 6/29/2011 Board Meeting ^{Oral} Communications

We, the undersigned, support the request of WaterPlus that you schedule a public workshop no later than 15 July 2011 to examine the WaterPlus proposal that the Monterey Peninsula Water Management District purchase California American Water Company's Monterey district system.

NAME	DEL MESA CARMEL ADDRESS
Bruce Dwyer	221
Dora Shapiro	221
Holland Martin	269
Betty Martin	269
W. M. ...	288
Betty Kusch	12
T. A. Boyden	21
Ellie Hayes	23799 Hwy Salinas Hwy
H. H.	126
Wanda Duesdell	150 Del Mesa
Leann ...	69 Del Mesa
Frederick A. Stenberg	248 Del Mesa
JOYCE E. MERRITT	#30
...	1161 Sylva Pl. Monterey
...	#215
Jana ...	#154 DEL MESA
Philip Hartman	#178 Del MESA CARMEL
Barbara Wells	#143 Del Mesa, Carmel
John ...	#9 Del Mesa Carmel
Money Sand	197 Del Mesa Carmel
Travis ...	271 Del Mesa
Tracy M. ...	4 Del Mesa
Beulah Trist	24 Del Mesa
Arthur T. Bruner	193 Del Mesa Carmel
Elisabeth Pluck	79 Del Mesa Carmel
Jeggy ...	72 Del Mesa Carmel
James Gustafson	229 Del Mesa Carmel

TO THE DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT:

We, the undersigned, support the request of WaterPlus that you schedule a public workshop no later than 15 July 2011 to examine the WaterPlus proposal that the Monterey Peninsula Water Management District purchase California American Water Company's Monterey district system.

2/3

(# only)

NAME	DEL MESA CARMEL ADDRESS
Elizabeth J. Salera	165
Ernest E. Salera	165
Muriel L. Foster	1
Robert Barnett	#211 - #102
April Barnett	#102
M.H. Gordon	3610 Hill Mesa ⁷²⁴ Del Carmel, CA
James R. Coyle	159 Del Mesa
Kyral C. King	200 Casanova Dr #125 Marina
Jan Kennedy	18 Del Mesa, Carmel
Bill [unclear]	29 DEL MESA CARMEL
[unclear]	1191 AMADOR AVE. SEASIDE CA 93955
Edgar Nanson	44 Del Mesa
Ch. Wharton	187 Del Mesa
Ann White	172 Del Mesa
Allen [unclear]	50 Del Mesa
Karen F. Adams	185 Del Mesa Carmel
Barbara W. Taylor	259 Del Mesa Carmel
Barbara Dandland	64
Judith Howard	212 DMC
Monette L. Becken	55 Del Mesa Carmel
Muriel Rowland	144 Del Mesa Carmel
Dennis Van [unclear]	286 Del Mesa Carmel
Joseph S. Szwed	75 Del Mesa Carmel

TO THE DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT:

We, the undersigned, support the request of WaterPlus that you schedule a public workshop no later than 15 July 2011 to examine the WaterPlus proposal that the Monterey Peninsula Water Management District purchase California American Water Company's Monterey district system.

3/3

NAME	DEL MESA CARMEL ADDRESS
Scott D. Thomson	247 Del Mesa
Margaret S. Thomson	247 Del Mesa
James Baz, Jr.	940 Drake Ave Monterey 93940
Mary E. Kelley	276 Del Mesa Dr.
John Paul F. Lucarel	67 Del Mesa DR.
M. B. B. B.	500 Del Mesa Dr.
Robert B. B. B.	282 Del Mesa
Donna M. Johnston	270 Del Mesa
Jesse Borman	130 Del Mesa
Nancy B. B. B.	729 DEL MESA CARMEL
Peter Paulin	199 Del Mesa Carmel
Larald Trueblood	150 Del Mesa Carmel
John M. M. M.	133 Del Mesa Carmel
Lawrence Sabet	89 Del Mesa Carmel
Dee's Queebach	135
Shirley Hamming	219 Del Mesa Carmel
M. M. M. M.	294 " "
Mathleen Macdonald	274 Del Mesa
Barbara Amend	242 Del Mesa
Jack Hengge	207 Del Mesa
Madeline S. Carver	142 Del Mesa
William H. Welch	84 Del Mesa
H. L. Reed	66 DEL MESA CARMEL
Alice J. Kapp	174 DEL MESA CARMEL