

EXHIBIT 17-A

Submitted by Molly  
Erickson at  
11/21/11 Board Meeting  
Item 16

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**From:** kmarkey65@comcast.net  
**To:** dave@laredolaw.com, darby@mpwmd.dst.ca.us  
**Sent:** Friday, August 5, 2011 5:17:49 PM  
**Subject:** Director's Appeal

Hi Darby, Dave,

Rule 71 allows me as an individual Director to refer "subordinate decisions" to the full Board - ie staff decisions. Pursuant to that right, I would like to appeal the following:

- 1. Subordinate decisions related to the appeal by Judy and David Beech.
- 2. Subordinate decisions related to the WDS applications by Flores and Picente

→ This includes, but is not limited to: the June 24th correspondence from Darby Fuerst to the Beeches deciding on the question of the extension of the well testing time period; the July 20th letter from the District to Flores and Picente, deeming their applications to be complete; and the July 26th letter from the District to the Beeches stating that their appeal of the June 24th correspondence will not be heard by the Board because it doesn't cite a Rule or Regulation.

I am concerned about this situation because it brings to light serious ambiguity in our Rules and Regulations regarding notification of well-testing, time periods for various actions, and standards for well testing. Each of these determinations by staff "affects, impacts, or deals with matters of general policy" (see Rule 71 as grounds for Director's appeals.) Furthermore, there are "significant environmental concerns" regarding failure to resolve these ambiguities, as well as "significant economic" impacts on the Districts services because we don't have the money to fight a court battle over denial of due process issues that could be so much more easily resolved at this level. We are reducing programs because of lack of dollars right now, and failure to act promptly and reasonably on this dispute could cost us significant dollars.

Please let me know if you need any clarification on my appeal, or if there are any other procedural steps I need to take to make this appeal valid from your point of view. I left a message for both of you regarding this matter, to give you a "heads up" that this was coming. Thanks!

Kristi Markey, Director  
Division 3

Director Markey offered a motion that a hearing be scheduled for the Board to consider her appeal of: (1) subordinate decisions related to the appeal by Judy and David Beech, (2) subordinate decisions related to the water distribution system applications by Flores and Pisenti, and (3) as further outlined in the August 5, 2011 email from Director Markey to Darby Fuerst, admitted as Exhibit 17-A of the staff report on this item. The motion was approved unanimously on a vote of 7 – 0.

The following persons addressed the Board during the public hearing on this item. (1) David Beech, the applicant, requested that the Board consider the substance of the original July 11, 2011 appeal at the next meeting, and also reconsider the General Manager's determination that the Flores and Pisenti applications were complete. (2) Aaron Bierman, Hydrologist, reported that results from the Pisenti and Flores well tests suggested that there was no constructive interference between those wells. He noted that the Beech well is in continuous operation. (3) Molly Erickson, Attorney for David and Judith Beech, requested that the Board set a hearing in October 2011 to consider the Beech appeal, and the Flores and Pisenti application completeness determinations

**Report of Ex Parte communications.** Directors Pendergrass, Doyle, Markey, Potter and Brower reported ex parte communications with David and Judy Beech and their attorney, Molly Erickson. Directors Lehman and Lewis reported ex parte communications with Molly Erickson.

**Director Potter exited the meeting at 9:15 pm, following public hearing item 17.**

Director Pendergrass offered a motion that was seconded by Director Doyle, that the Board adopt the second reading of Ordinance No. 149. The motion was approved on a vote of 6 – 0. Directors Brower, Doyle, Lehman, Lewis, Markey and Pendergrass voted in support of the motion. Director Potter was absent. No public comment was directed to the Board during the public hearing on this item.

On a motion by Director Doyle and second of Director Lewis, the Board adopted the October through December 2011 Quarterly Water Supply Strategy and Budget on a vote of 6 – 0. Directors Brower, Doyle, Lehman, Lewis, Markey and Pendergrass voted in support of the motion. Director Potter was absent. No public comment was directed to the Board during the public hearing on this item.

Director Pendergrass offered a motion to adopt Resolution 2011-12, modifying Rule 162. The motion was seconded by Direct Lewis and approved on a vote of 6 – 0. Directors Brower, Doyle, Lehman, Lewis, Markey and Pendergrass voted in support of the motion. Director Potter was absent.

#### **PUBLIC HEARINGS**

17. **Consider Board Member Referral Regarding General Manager Direction for Assessment of Flores Well #1 and Pisenti Well #2 (APN 103-071-002 and 103-071-019, Respectively).**

18. **Consider Second Reading and Adoption of Ordinance No. 149, An Ordinance of the Board of Directors Amending the Rebate Program**

19. **Consider Adoption of October through December 2011 Quarterly Water Supply Strategy and Budget**

#### **ACTION ITEMS**

20. **Consider Adoption of Resolution 2011-12 Modifying Rule 162 – Regulatory Water Production Targets for California American Water Systems**