



Supplement to 4/16/2012 MPWMD Board Packet

Attached are copies of letters received between March 14, 2012 and April 9, 2012. These letters are also listed in the April 16, 2012 Board packet under item 17, Letters Received.

Author	Addressee	Date	Topic
Dales Ellis	MPWMD Board	3/29/2012	Opposition to Current Proposition 218 User Fee Proceeding
Margaret Thum	Unidentified	3/30/2012	Monterey Peninsula Water Management District's "User Fee" Memorandum
John Narigi & Mike Zimmerman	MPWMD Board	3/26/2012	Opposition to Current Proposition 218 User Fee Proceeding
Joel R. Panzer	David Stoldt	3/22/2012	Mobile Water Distribution Permit System Application
George Schroeder	David Stoldt	3/20/2012	Ability of District to Collect for Services, Facilities and Water

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RECEIVED

APR 04 2012

MPWMD

March 29, 2012

The Honorable Dave Potter, Chair, and Board
 Monterey Peninsula Water Management District
 5 Harris Court, Building G
 Monterey, California 93940

Re: Opposition to current Proposition 218 User Fee proceeding

Dear Chair Potter and Board Members:

This letter is a follow-up to my comments March 28. The Monterey County Hospitality Association is opposed to the Proposition 218 protest procedure the District is proposing to use to impose what is tantamount to a new District fee. The Association's immediate concern is about the District's proposed process although MCHA fully recognizes there are numerous legal issues that will also need to be addressed. We want to be equally clear that MCHA has not yet discussed or taken a position on a fee. There are too many questions about the fee structure and how it would be applied that need to be answered before MCHA considers its position on a fee.

We want to be equally clear that MCHA wants a water project that will provide a sustainable long term water supply for the Peninsula at a reasonable cost. MCHA has been the leading voice on the Peninsula for such a project and has continually pushed our local elected officials to lead that effort. Any belief that MCHA is not supportive of a project that will provide that long term water supply is wrong.

Whether this is a tax, fee or assessment, it is clearly a key financial component for the future work of the District. MCHA believes those people who will ultimately pay the bill, either as an owner or tenant whose rents include fees on tax bills, and the voters to whom the District is accountable should have a clear voice in deciding what will be paid to the District and for what purposes. That can only be accomplished through a ballot measure that can be fully reviewed, discussed and decided by the people who are most affected.

A protest vote conducted by mail only to owners that is based on the assumption that the absence of a no vote is the same as a yes vote lacks the accountability that the public should expect from its governing agencies. And, just because agencies have done it this way in the past does not make it right for the MPWMD today.

MCHA urges the District to move away from the path it is currently on and move toward making this a full public discussion and vote about the fee and its intended uses.

Sincerely,

Dale Ellis, Government Affairs Director
 Monterey County Hospitality Association

ADMINISTRATIVE OFFICE

OCEAN & MISSION • SUITE 201 • P.O. BOX 223542 • CARMEL, CA • 93922
 PHONE: 831-626-8636 • FAX: 831-626-4269 • EMAIL: badams@adcomm4.com

MEMORANDUM

RECEIVED

APR 03 2012

MPWMD

To:

From: Margaret Thum

Date: March 30, 2012

Re: Monterey Peninsula Water Management District's "User Fee"

Background

The Monterey Peninsula Water Management District's (District) "user fee," which was never approved by the voters, was first enacted in 1983. In 2009, the "user fee" was 8.325% of the meter and water usage charges of California American Water (Cal-Am) customers. The fee was collected by being placed on the customer's Cal-Am water bill. The "user fee" is/was a significant revenue source for the District – comprising almost 50% of the District's annual operating budget.

In 2009, Cal-Am submitted an application to the California Public Utilities Commission (PUC) to increase its rates by 40% over three years. As part of that application, the District requested PUC authorization for Cal-Am to continue to collect and remit the "user fee" to the District. Because the District's user fee was calculated as a percentage of Cal-Am's rates, specifically 8.325%, the total amount of fees collected by the District would correspondingly increase with higher Cal-Am rates.

In December 2010, a California Public Utilities Commission (PUC) judge issued a proposed decision, which became final in 2011, ordering Cal-Am to stop charging and collecting the "user fee" because Cal-Am and the District's application to the PUC "contain[ed] insufficient cost justification [for the fee], [there were] several instances of apparent double-counting, and ratemaking treatment at odds with [the PUC's] standards." In particular, the PUC judge noted that the "user fees" which were represented by the District to be earmarked the District's Carmel River Mitigation Program and Aquifer Storage Recovery Project had been used for other items, such as almost \$1 million used for the purchase of the District's office building. In addition, the PUC noted that of the almost \$3.7 million in revenues from the user fee collected during the fiscal year 2007-08, almost half went to personnel costs (\$1.6 million) and another \$1 million went to "unspecified 'project expenses' for 'water supply.'" The PUC judge also stated there were several instances of "duplication in effort and accounting." For example, revenue from the District's user fee was being used for work on the Coastal Water Project, which Cal-Am was actively involved and as such "the District need not act on Cal-Am's behalf." [NB: the PUC had approved Cal-Am to recover costs on the Coastal Water Project, so the District's fees were duplicative]

Recent Events

In October 2011, after failing to persuade the PUC to change its decision, the District's Board of Directors directed the District to examine alternative approaches to collect the District's "user fee."

In January 2012, the District's General Manager gave an update to the Board on the collection of the "user fee." The General Manager's proposed timeframe included adoption of the new "user fee" on April 16, 2012, sending information to property owners on May 3, 2012, and conducting protest hearings in June 2012. If not properly protested, the fee will become effective on July 1, 2012, and will be placed on future property tax bills.

In February 2012, the District Board approved hiring a rate consultant to allocate \$3.7 million among property owners – \$3.7 million is the amount needed by the District to cover costs previously paid through the "user fee."

User Fee vs. Tax

The standard for enacting a "user fee" is much lower than that required for special taxes. User fees are essentially deemed approved, unless a majority of property owners in the District affirmatively protest the fee. Alternatively, special taxes require 2/3 voter approval (the District is prohibited under the California Constitution from adopting taxes for general purposes.)

In my opinion, the District's "user fee" is not a true user fee, but rather a tax. A user fee is one paid for direct use. An example of a user fee would be paying for a parking place. An individual pays a fee for the period of time in which they use the parking space.

A tax on the other hand is compulsory and not related to direct use. California courts have indicated that a key distinction of a tax vs. an assessment/ fee is the primary purpose of a tax is to raise money. The District has stated it needs to raise \$3.7 million to cover the costs previously collected through its "user fee." The PUC judge's conclusion that there was insufficient cost justification for the fee, indicates to me that the "fee" is a tax, which would require approval of all voters, and not just a protest of some property owners.

What to do?

It seems clear to me that the "user fee" will be enacted, mainly because property owners are likely not aware they must affirmatively protest the "fee" to prevent its enactment. Once the fee is enacted, it will likely be imposed forever, unless a legal challenge is brought quickly after enactment.

In an attempt to avoid the legal challenge route, it seems best to me to try to raise awareness regarding the protest requirements. I am willing to volunteer my time in helping create awareness of the protest requirements, but am new to the area, and do not know if there are others in the area who would like to join forces on this issue. I also have a few ideas on how to raise community awareness on this issue, e.g., include an insert in the District's letter to property owners informing them of the new user fee [I'm not sure if this is permitted], deliver flyers/notices to property owners re: the protest requirements, community meetings, etc.

If you're aware of anyone in the community who would be interested in joining forces on this issue, please let me know. I may be reached at (831) 333-1987 (home), (650) 218-1937 (cell) or margaret.thum@gmail.com.

Coalition of Peninsula Businesses

A coalition to resolve the Peninsula water challenge to
comply with the CDO at a reasonable cost

*Members Include: Monterey County Hospitality Association, Monterey Commercial
Property
Owners' Association, Monterey Peninsula Chamber of Commerce,
Carmel Chamber of Commerce, Pacific Grove Chamber of Commerce,
Monterey County Association of Realtors, Community Hospital of the Monterey Peninsula*

March 26, 2012

RECEIVED

MAR 26 2012

The Honorable Dave Potter, Chair, and Board
Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, California 93940

MPWMD

Re: Opposition to current Proposition 218 User Fee proceeding

Dear Supervisor Potter and Board Members:


The Coalition of Peninsula Businesses strongly opposes the user fee Proposition 218 protest procedure you are currently pursuing.

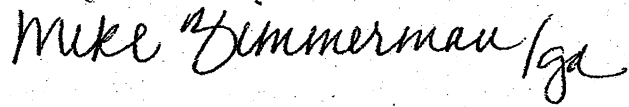
The current process is based on several incorrect assumptions; principal among these are 1) the theory that this is merely a continuation of an existing fee and 2) that the user fee has anything to do with water supply augmentation. The 'user fee' was discontinued several years ago pursuant to several CPUC decisions. The user fee once collected by you never was used, except in an insignificant part, for any water augmentation project.

The Coalition would be happy to discuss with you support for a fee devoted to water supply augmentation, if one is needed. The current course of conduct you are on to reinstate the user fee as a property tax-bill assessment is not one. In fact, your current course flies in the face of public transparency and sensitivity to public sentiment.

The Coalition strongly urges that you stop the process you are on now and begin a discussion with us, and with the community at large, about a fee or charge devoted to water supply augmentation.

Sincerely,


John Narigi, Co-chair
Vice President and General Manager
Monterey Plaza Hotel & Spa



Mike Zimmerman, Co-chair
Executive Vice President and COO
Cannery Row Company

cc: MPWMD General Manager Dave Stoldt

MAUREEN WRUCK
PLANNING CONSULTANTS, L.L.C.
Development Consultants

Planning ~ Land Use & Permitting ~ Subdivisions ~ Mitigation Monitoring ~ Permit Compliance ~ Certificates of Compliance

March 22, 2012

RECEIVED

MAR 26 2012

MPWMD

David Stoldal, General Manager
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942-0085

RE: Mobile Water Distribution Permit System Application
(WDS #20110322CAR) Carroll 566 Aguajito Road, APN 103-061-017

Dear Mr. Stoldal:

I am writing you in an effort to expedite permit application processing and issuance by the MPWMD. It has now been one year since the formal application was filed and fees paid. Yet, there has been no permit issued or any indication that there has been a date set to issue the permit.

As a matter of background, our office is the agent for Mr. Carroll. We applied for the Mobile Water Distribution System permit to allow for the fill of a swimming pool and spa and to maintain water levels. The pre-application materials were filed on December 17, 2010. The formal application was filed on March 22, 2011, with an application fee of \$3,800 (Receipt R03242011006).

I recognize that your staff has many demands on their time, but if the District requires a permit for a project, applications must be processed in a timely manner. To my way of thinking, this is a non-controversial permit for a fairly simple request (allow a truck to occasionally deliver water for swimming pool and spa uses). I can't understand why this is permit taking so long to process.

Can you please look into this and let us know how much more time is needed to process this permit?

Sincerely,

Joel R. Panzer

JP/MPWMD Receipt R03242011006

MONTREY PENINSULA WATER MANAGEMENT DISTRICT
 5 HARRIS COURT, BLDG. G
 POST OFFICE BOX 85
 MONTEREY, CA 93940 • (831)-658-5600
 FAX 831-6449560 • <http://www.mpwmd.dst.ca.us>

RECEIPT

MONTREY PENINSULA WATER MANAGEMENT DISTRICT

Payment From: B WISE, INC.
 774 MAYS BLVD, ##10-323
 INCLINE VILLAGE, NV 89451

Receipt Number : R03242011006
Invoice Number : 03242011006
Date : March 24, 2011

Description	Amount
WDS-Permit Application	\$ 3800.00
PAID AMOUNT	\$ 3800.00

Property Address

Contact Number (303)-440-2926

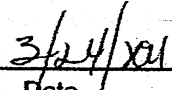
Receipt Account One-Time

Receipt Info CARROLL MOBILE WDS--WDS PERMIT APPLICATION FEE

Payment Type Check Payment



 Signature



 Date

The Professional Building of Monterey

P.O. Box 3080
Monterey, CA 93942

March 20, 2012

David Stoldt
Monterey Peninsula Water Management District
5 Harris Court
Monterey, CA 93940

RECEIVED

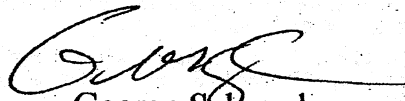
MAR 22 2012

MPWMD

Dear Dave:

In reference to our discussion regarding the ability of the District to collect for services, facilities and water, I enclose a copy of the page from the legislation creating the District that I showed you last Wednesday. You have very broad powers.

Sincerely,



George Schroeder

WATER CODE—APPENDIX

App. § 118-328

§ 118-325.5. Development of water resources

Sec. 325.5. To the extent feasible, the district policy shall require development of the water resources within the district boundaries before utilizing water originating outside its boundaries. (Stats.1977, c. 527, p. 1687, § 325.5.)

§ 118-326. Sale and disposal of waters; rates and charges

Sec. 326. The district shall have the power:

(a) To sell, lease or otherwise dispose of water or any rights to the use of the works of the district subject to the provisions of Section 329.

(b) To fix, revise, and collect rates and charges for the services, facilities, or water furnished by it.

(c) To establish rules and regulations, consistent with the provisions of law and the rules and regulations of the state and county health officials, to protect the public health in the operation of the works, to provide for the sale, distribution, and use of water, and the services and facilities of the works, to provide that service, facilities, or water shall not be furnished to persons against whom there are delinquent charges, and to provide for charges for the restoration of service.

(d) To provide that charges for any of its services or facilities may be collected together with, and not separately from, the charges for other services or facilities rendered by it, or it may contract that all such charges be collected by any other private or public utility, and that such charges be billed upon the same bill and collected as one item.

(e) To provide that if all or part of a bill is not paid, the agency may discontinue any or all services or facilities for which the bill is rendered.

(f) To provide for the collection of charges. Remedies for their collection and enforcement are cumulative and may be pursued alternatively or consecutively as determined by the board.

(g) To provide for a basic penalty of not more than 10 percent for nonpayment of the charges within the time and in the manner prescribed by it, and, in addition, to provide for a penalty of not exceeding one-half of 1 percent per month for nonpayment of the charges and basic penalty. The district may provide for the collection of such penalties.

(h) To provide for the collection of the charge and penalties by making the same a lien upon the real property and collectible at the same time and in the same manner as taxes and assessments are so collected upon such real property.

(Stats.1977, c. 527, p. 1687, § 326.)

§ 118-327. Control of flood and storm waters

Sec. 327. The district shall have the power to control the flood and storm waters of the district and the flood and storm waters of streams that have their sources outside of the district, which streams and floodwaters flow into the district, and to conserve such waters for beneficial and useful purposes of the district by spreading, storing, retaining, and causing to percolate into the soil within or without the district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, public highways, life and property in the district, and the watercourses outside of the district of streams flowing into the district.

(Stats.1977, c. 527, p. 1688, § 327.)

§ 118-328. Acquisition of water systems; storage of water; conservation and reclamation; maintenance of actions; abatement of waste

Sec. 328. The district shall have the power:

(a) To acquire public or private water systems necessary or proper to carry out the purposes of this law.

(b) To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district.

(c) To conserve and reclaim water for present and future use within the district.

(d) To appropriate and acquire water and water rights, and import water into the district and to conserve and utilize, within or outside of the district, water for any purpose useful to the district.

(e) To commence, maintain, intervene in, defend or compromise, in the name of the district on behalf of the landowners therein, or otherwise, and to assume the costs and expenses of any action