

Margaret L. Thum
PO Box 991
Pebble Beach, CA 93953

RECEIVED

APR 16 2012

April 16, 2012

MPWMD

Mr. David Potter, Chairman of the Board of Directors
Board of Directors of the Monterey Peninsula Water Management District
Mr. David Stoldt, General Manager
Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, CA 93942

Re: Monterey Peninsula Water Management District's (the "District") Proposed "User Fee"

Dear Chairman Potter, members of the Board of Directors, and General Manager Stoldt:

Tonight, the District's Board is scheduled to approve Ordinance 152 that will impose a new "user fee" on certain residents within the District's territory.

You may recall at the Board meeting on March 19, 2012, I spoke and stated that the "user fee" is a tax. Under Proposition 218, taxes must be approved by the electorate. In response to my comments, the Board instructed District counsel to write an opinion.

As an interested property owner, I reviewed District counsel's draft memorandum dated March 26, 2012. If the memorandum has not changed from its draft form, I strongly urge the District to obtain another opinion. The purpose of this letter is to save the District unnecessary costs associated with any potential legal challenges arising from an improperly enacted "user fee." At this critical juncture for residents on the Monterey Peninsula, the District needs to be solely focused on obtaining a new water supply for the area.

At the end of the first page of the draft memorandum, there is a statement that the District is authorized to "impose rates and charges for services, facilities or water that it may furnish, as well as costs of operations and activities related to the provision of water delivered by others." Neither of these propositions is correct.

The Legislature made it clear in section 118-326(b) of the District's enabling legislation that the District may only charge for services, facilities, or water "furnished by it." The enabling legislation does not give the District authority to charge for services, facilities or water it "may furnish." Furthermore, because the District may only charge for items furnished by it, the District may not charge for operational costs or activities provided by others. Specifically, Section 118-326(b) states:

"The district shall have the power...[t]o...collect rates and charges for the services, facilities, or *water furnished by it.*" (emphasis added).

The Legislature did not give the District authority to charge for services, facilities or water it "may" furnish, nor did it give the District authority to charge for costs or activities incurred by others.

Mr. David Potter
District Board Members
Mr. David Stoldt
April 16, 2012
Page 2

Footnote 1 of the March 26th draft memorandum lists several legal authorities that supposedly support the conclusion that the District has authority to charge for future services and costs of services provided by others. Unfortunately for the District, none of the cited legal authorities support either proposition. The authorities in footnote 1 seem to address what is a "charge" or "rate" – the authorities listed do not define a "user fee" nor do they support that the District may charge for future services or imposed charges for costs incurred by others who provide water services.

The chart below lists the legal authorities cited in footnote 1 of the March 26th draft memorandum:

Referenced Code	Quoted Section of Referenced Code
Government Code § 54314	"Charges" includes fees, tolls, rates, and rentals.
Government Code § 66000(b)	"Fee" means a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency <i>to the applicant</i> in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include [rest of statute is omitted.] (emphasis added)
Public Utility Code § 210	"Rates" includes rates, fares, tolls, rentals, and charges, unless the context indicates otherwise.
Water Code § 20541	"Charges" includes tolls.
Water Code § 34034	"Charges" includes tolls and rates.
Public Resources Code § 13015	"Charges" includes fees, tolls, rates, and rentals.
Health & Safety Code § 4955	"Rates," as used in this chapter ¹ , includes rates and charges.

¹ The chapter referenced is entitled "Sewer Revenue Bonds."

Please ask yourself where in the above referenced code sections is there support for the proposition that the District may charge for future services, facilities or water and that it may charge for operational costs and activities related to delivery of water provided by others.

If you have any questions, please feel free to contact me at (650) 218-1937.

Sincerely,



Margaret L. Thum

cc: David C. Laredo