MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

Supplement to 5/21/2012 MPWMD Board Packet

Attached are copies of letters received between April 10, 2012 and May 14, 2012. These letters are also listed in the May 21, 2012 Board packet under item 18, Letters Received.

Author	Addressee	Date	Topic
John H. Dillon	David Stoldt	5/9/12	Ordinance No. 152 – Proposed User Fee
Richard Olebe	MPWMD	4/24/12	San Clemente Dam Seismic Safety Project Draft SEIR
David Beech	Judi Lehman	4/16/12	Second Reading of Ordinance No. 150 – Water Distribution Well Testing
John V Narigi and Mike Zimmerman	MPWMD Board	4/16/12	Opposition to Current Proposition 218 User Fee Proceeding
Margaret Thum	MPWMD Board	4/16/12	MPWMD Proposed User Fee
Jeffrey L. Massey	David C. Laredo	4/13/12	Ordinance 152 – Authorizing an Annual Water Use Fee
Mark S. Morgan	MPWMD Board	4/12/12	Objection to Proposed User Fee Surcharge
Mark A. Wasser	MPWMD	3/30/12	Litigation Hold and Demand to Preserve Evidence

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Mr. Dave Stoldt, General Manager
Monterey Peninsula Water Management District
5 Harris Court, Building G
P.O. Box 85
Monterey, California 93942-8500

May 9, 2012

Mr. Stoldt,

Attached for your information is a copy of a formal complaint filed with the Attorney General of the State of California against the Monterey Peninsula Water Management District for violations of State election laws, Proposition 218 and the Constitution of the State of California. This complaint was filed at the Office of the Attorney General in Sacramento on May 9, 2012, and copied to the California Public Utilities Commission and the Monterey County District Attorney.

I have transmitted the complaint letter to you without Attachments, as these are available on your website, and at the Monterey Herald website.

I hereby request that this complaint be entered into the official record as a comment on the MPWMD's proposed Ordinance 152, and included in the packet of Board Members for their consideration prior to the June 12, 2012 Public Hearing on the proposed "fee". I will also provide copies of this complaint to your Board members under separate cover. Please do not hesitate to contact me if I may provide any additional information.

Sincerely,

John H. Dillon
105 Sourdough Court
Folsom, CA 95630
(916) 990-4334
johndillon@att.net

Attachment

Honorable Kamala D. Harris, Attorney General
State of California
Office of the Attorney General
1300 "I" Street
Sacramento, CA 94255
Attn: Public Inquiries Division

Delivered by Hand

May 9, 2012

RE: Complaint of Violations of State Constitution Articles XIII (C) and (D) and Proposition 218 by Monterey Peninsula Water Management District (MPWMD)

Attorney General Harris,

I wish to file a formal complaint of wrongdoing against the Monterey Peninsula Water Management District for violations of Articles XIII(C) and (D) of the Constitution of the State of California and Proposition 218 as they relate to the approval of new taxes or assessments by public agencies. It is my complaint that MPWMD is willfully and consciously attempting to violate the State Constitution by misusing the Proposition 218 process to illegally approve a fee which has been repeatedly disallowed by the CPUC in judicial findings and orders. I am the owner of a single-family residential property in Pacific Grove which would be subject to the proposed fee.

Background

At its April 16, 2012 meeting, the Monterey Peninsula Water Management District (MPWMD) announced its intention to impose a "fee" for water planning services on those properties within the District which are served by the California-American Water Company. (MPWMD is not a retail water providing utility) MPWMD defines the proposal as a "user fee" and chose to use Proposition 218 as the mechanism to impose and collect this "fee". This definition was used by MPWMD to justify the most abbreviated timeline possible to allow the District to begin assessing the "fee" by July 1, 2012. To achieve this timeline, the District incorrectly asserts that a "protest letter" from a majority of all affected property owners subject to the "fee" would need to be received before June 12, 2012 to stop adoption of the District's Ordinance 152. By specifying the inappropriate "majority protest letter" mechanism, MPWMD seeks to place the highest burden on property owners in affected portions of the District, and to preclude meaningful public input or opposition to the fast-track "fee" approval process. This is in direct contravention of the provisions of Proposition 218, Article XIII of the State Constitution and of the judicial directives of the California Public Utilities Commission.

In fact, Proposition 218 would more correctly identify this "user fee" as an assessment or tax, and would require an actual vote of affected property owners tabulated by ballots in favor of, or opposed to, the assessment. At its option, the MPWMD could have placed the issue before the voters in a general election, which would have required a two-thirds affirmative vote. Realizing that this assessment would

have slight chance of approval by voters-at-large or by a majority of affected property owners, the MPWMD chose a path on the margin of illegality, and have strayed onto the wrong side of that line.

The proposed MPWMD "user fee" has a long and troubled history. I will not reconstruct the chronology in this letter, but I refer the Attorney General to the findings of the California Public Utilities Commission's (CPUC) Administrative Law Judge, which are included as Attachment 1 to this letter. The CPUC found that the fee, which had been collected for MPWMD by California-American Water Company as part of customers' monthly bills, was not in the public interest, insufficiently documented and inconsistent with CPUC ratemaking standards. The CPUC ordered that Cal-Am Water cease collecting this fee on behalf of the MPWMD.

The District's response was to attempt to misuse the Proposition 218 process to impose fees which the CPUC had explicitly disallowed them in several instances. I believe that this blatant disregard for the findings and orders of the CPUC judicial process on the part of the MPWMD pushes the District's Board members and staff over the line of criminal accountability for the coordinated effort to commit election fraud by the calculated misuse of Proposition 218. I am hardly alone in this opinion. Attachment 3 to this letter is a May 3, 2012 editorial published in the Monterey County Herald in agreement that MPWMD is attempting to misuse Proposition 218 to deny public input and fast-track a tax without the required vote of the electorate.

Analysis of MPWMD Violations of Proposition 218 and Articles XIII (C) and (D) of the Constitution of the State of California

The MPWMD's assertion that the tax proposed in Ordinance 152 is a "user fee" is intended to lower the bar for approval and to place the maximum burden on property owners to contest the fee through a "protest letter" mechanism. MPWMD relies upon Art. XIII (D) Section 6, Subsections 1 and 2 to support their "Proposition 218 process":

> *SEC. 6 Property Related Fees and Charges. (a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:*
>
> *(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed on each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed on each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the time, date and location of a public hearing on the proposed fee or charge.*
>
> *(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each*

identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

At this point, the MPWMD legal team stopped reading Article XIII (D).6.2, and concluded that this was all that is necessary to successfully adopt a new "user fee" within 45 days, with no need to submit the question to the electorate or to affected property owners for an actual vote. MPWMD also asserts that unless a "majority protest letter" is generated by more than 21,000 property owners before June 12, 2012, the District's obligations under Proposition 218 are satisfied, and the "fee" is adopted automatically. This abbreviated reading of XIII(D).6.2 can only stand if one ignores the remaining subsections of XIII(D).6 :

(2)(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2)Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3)The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge or charge may be imposed upon any parcel unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees or Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of

the property owners of the parcels subject to the fee or charge, or at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

The MPWMD "Proposition 218 Process" falls far short of the Constitutional requirements for agency approval of a new assessment or tax to be imposed on property owners in the District. Specifically, the MPWMD "process" violates the requirements of Proposition 218 and the State Constitution in the following instances:

1. MPWMD's notification letter (Attachment 2) is not compliant with XIII (D).6.1 since it does not include the amount of the fee or charge to be imposed on each parcel. Rather, the notification letter includes a complicated general table of proposed fees to be assigned to classes of land use without including the actual fee to be imposed on individual parcels, as required in XIII(D).6.1. Therefore, each property owner is expected to interpret this table and calculate the fee which might be attributable to their parcel. XIII(D)6.1 requires that the notice letter include "the amount of the fee or charge proposed to be imposed on each" parcel, in addition to "the basis upon which the amount of the proposed fee or charge was calculated". MPWMD claims to satisfy the requirements of XIII(D)6.1 with only a complicated table of general rates for classes of land use, and no parcel-specific fee amounts. **This is a violation of Article XIII(D).6.1 of the State Constitution.**

2. MPWMD's assertion that a majority protest vote is required to prevent adoption of the fee can only be sustained if the agency ignores the requirements for approval of new fees or charges contained in Subsections (2)(b) through 5 of XIII(D).6. These sections of Article XIII clearly require MPWMD to submit this question to a vote of the affected property owners, or at the agency's option, a vote of the public at large. Approval of this assessment or tax under the actual requirements of Proposition 218 would require a majority affirmative vote of affected property owners or a two-thirds affirmative vote of the electorate at large. **This is a violation of Articles XIII(D).6.2 and XIII(D).4 of the State Constitution.**

3. The "projects" which are the supposed purpose of this "fee" are not "immediately available to" property owners affected by the proposed fee. Rather, the projects include capital improvements to provide ***future*** water capacity, as well as very broad goals of habitat mitigation and water management planning, the benefits of which are very much available to the public at large. XIII(D).6.2.b.4 also defines these types of projects as assessments, not fees, and specifies the use of the electoral process described for assessments in Article XIII(D), Section 4, Subdivisions (b) through (g). **This is a violation of Articles XIII(D).6.2.b.4. and XIII(D).4 of the State Constitution.**

4. MPWMD has chosen to ignore the requirements of XIII(D).6.5 as it pertains to the process for submitting a proposed fee to the public for approval or rejection. As noted above, the District is attempting to shift the burden of proof from itself to those who would be subject to

the proposed "fee". The District's attempt to require a majority protest letter to be drafted, generated and transmitted to the MPWMD offices by more than 21,000 property owners by June 12, 2012 is a cynical strategy to stifle public input and erect a barrier too tall to be overcome. On this topic, I asked MPWMD staff if they had prepared a "sample" protest letter for the use of affected property owners and was told that the "protest letter" is the responsibility of each property owner. However, MPWMD did provide such a sample letter for the public to send to the CPUC in support of the MPWMD fee which was disallowed by the CPUC in 2011.

MPWMD also asserts that they are not subject to the requirements of XIII(D).6.5 because that section exempts fees for sewer, water, and refuse collection services from a requirement for voter approval. This assertion is invalid, as MWPMD is not a retail water provider, and this "fee" has been found to be unrelated to the delivery of water to the customers of the California-American Water Company. In its analysis of Proposition 218, the California Legislative Analysts Office states that:

> "The drafters of Proposition 218 indicate that it was their intent to include most fees commonly collected on monthly bills to property owners, such as those for water delivery, garbage service, sewer service or stormwater management fees."

Examples of this type of charge would include the monthly garbage collection charge which I pay to the City of Folsom, or charges for water service to the retail customers of the East Bay Municipal Utility District, which are not required to submit "routine" fee increases to a vote of the people. However, these utilities are regulated by the California Public Utilities Commission, and their ratemaking is subject to the requirements of the CPUC. The CPUC found that the MPWMD "user fee" is not consistent with the Commission's ratemaking standards and not in the public interest, and therefore could not be approved by the CPUC. In response, MPWMD specifically asserts that it is not a public utility and is not subject to regulation by the CPUC. MPWMD would seek the exemption from voter approval for water services in XIII(D).5.c, but without the oversight of the CPUC. The District can't have it both ways. As revealed in the rate study prepared for MPWMD, the District's consultant was not able to identify any water management agency in California which imposes a water management fee on retail customers. Again, MPWMD must misuse the definitions of Proposition 218 to support a position which is inconsistent with the actual requirements of the State Constitution. **This is a violation of Articles XIII(D).6.5.c and XIII(D).4 of the State Constitution.**

In summary, MPWMD has willfully committed several specific violations of Article XIII of the California State Constitution in its fast-track effort to impose a "fee" which has been repeatedly disallowed by the CPUC. I ask that the Attorney General investigate the specific complaints of violations of state election laws and the State Constitution outlined in this letter, as well as any criminal wrongdoing on the part of District Board Members and/or staff in the commission of these violations.

Conclusion and Filing of Complaint against MPWMD for Violations of Articles XIII(C) and (D) of the Constitution of the State of California

I hereby submit this letter as a formal complaint to the Attorney General of the State of California against the Monterey Peninsula Water Management District for violations of the State Constitution and state election laws, and possible criminal conspiracy to violate those laws on the part of the District's Board and staff.

Sadly, the record provides ample justification for suspicion of the MPWMD. As noted in the CPUC findings, MPWMD diverted nearly $1 million in Carmel River Mitigation Funds to pay for 50% of the costs of a new District office building in a prestigious office park. The $3.7 million annual "user fee" revenues are uncomfortably close to the District's annual personnel costs of $3.25 million. The CPUC found that MPWMD "fee" charged to Cal-Am Water customers was duplicative and inadequately documented. The CPUC also found the "fee" to be inconsistent with the Commission's ratemaking standards and not in the public interest.

It is my conclusion that the primary mission of the MPWMD has become salary perpetuation in a new office building in a pleasant campus setting. To achieve this goal, MPWMD is demanding that each of its 105,000 constituents pay about $35 per year to cover the salaries of a staff of 28 people. It may be that the people of the Monterey Peninsula can no longer afford almost $4 million annually to support an agency of elusive value. Proposition 218 and the State Constitution clearly require that the District's constituents are given the opportunity to vote on the issue.

In a technical memorandum prepared for the MPWMD by Bartle Wells Associates (BWA), the District's consultant found four regional water districts in California that allocate costs for water management services to their wholesale customers. However, the consultant continued:

> "It should be noted that all of these agencies are wholesalers and the rates shown in Table 21 are the rates that they charge to their customer agencies. **BWA was not able to identify any agencies that charge a specific fee to retail customers for water management services.**"

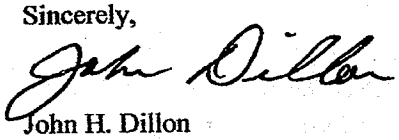
So, MPWMD is breaking new ground by fast-tracking an unprecedented "fee" which has been found indefensible and inappropriate by the CPUC. To accomplish this before the money runs out on July 1, 2012, the District decided to ignore the CPUC and the State Constitution and headed to the edge of illegality.

I would submit that they have gone significantly over that edge, and are now operating in total disregard of laws, judges and the public interest. It is my opinion that MPWMD has used up any "benefit of the doubt" in its calculated misapplication of Proposition 218 by deliberately misinterpreting the law, and ignoring the disturbing findings of the CPUC's Administrative Law Judge.

I request the Attorney General's immediate attention to this issue, as the MPWMD intends to approve this Ordinance at its June 12, 2012 meeting, and to begin collecting this fee on July 1, 2012, unless more than 21,000 property owners draft and file "protest letters" before the June 12 meeting. Since the MPWMD notification document (Attachment 2) identifies legal fees as a legitimate use of "user fee" proceeds, property owners will effectively be funding MPWMD's legal costs to defend an illegally-adopted "fee". I would ask that the Attorney General seek injunctive relief in the judicial system to prevent MPWMD from collecting or using this "fee" pending resolution of the legal issues resulting from the election abuses inherent in the District's self-serving interpretation of the Proposition 218 requirements. Further, I request that the Department of Justice initiate a criminal investigation to determine if Board members and/or staff of the MPWMD engaged in a criminal conspiracy to violate election laws in this situation.

Again, I must ask for your immediate attention to this complaint, as the MPWMD is determined to approve this illegal "fee" at its June 12, 2012 meeting. Allowing this charade to go forward will reward MPWMD for violating the State Constitution and allow the District to use the public's money to defend their illegal course of action. I would like to express my appreciation in advance for your attention to this situation, and please do not hesitate to contact me if I may provide any additional information.

Sincerely,



John H. Dillon
105 Sourdough Court
Folsom, CA 95630
(916) 990-4334
johndillon@att.net

cc: Debra Bowen, California Secretary of State
Dean C. Flippo, Monterey County District Attorney
Editor, Monterey County Herald
Michael R. Peevey, President, California Public Utilities Commission
Board Members, MPWMD (w/o Attachments)
General Manager, MPWMD (w/o Attachments)

Attachments

Attachment 1
Decision Denying Approval of Settlement Agreement and Authorizing Amendment to Application in the Matter of the Application of the California-American Water Company (U210W) for an Order Authorizing the Collection and Remittance of the Monterey Peninsula Water Management District User Fee

California Public Utilities Commission 3/24/2011

Attachment 2
Notification of Proposed Monterey Peninsula Water District User Fee

MPWMD 4/26/12

Attachment 3
Editorial Comment on MPWMD User Fee Process

Monterey County Herald 5/3/2012

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY
EDMUND G. BROWN JR., Governor

DEPARTMENT OF WATER RESOURCES
1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791

April 24, 2012

To: San Clemente Dam Seismic Safety Project Draft SEIR Reviewers

San Clemente Dam, No. 642
Monterey County

Thank you for your interest in the San Clemente Dam Seismic Safety Project.

On December 31, 2007, the California Department of Water Resources (Department) certified the Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) (State Clearinghouse Number 200591148) in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15090.

In March 2010, the California American Water Company (CAW), the California Coastal Conservancy, and the National Marine Fisheries Service formally decided to collaborate on pursuing implementation of Alternative 3 (Carmel River Reroute and Dam Removal). CAW filed an updated design application with the Department's Division of Safety of Dams for construction of Alternative 3, and on March 14, 2011 the Department filed a Notice of Determination for Alternative 3 with the California State Clearinghouse.

In July 2011, CAW identified several necessary changes to implement the project. The Department, as the CEQA lead agency, evaluated the proposed changes and determined that, in accordance with CEQA Guidelines Section 15163, a supplement to the Final EIR/EIS is needed. The enclosed CD contains an electronic copy of the Draft Supplement to the San Clemente Dam Seismic Safety Project Final EIR/EIS (Draft SEIR) in Adobe format. The Draft SEIR contains only the information necessary to make the Final EIR/EIS adequate for the Project as revised.

The public review period for this Draft SEIR begins April 24, 2012 and will end June 7, 2012.

Please send your comments to:

Mr. Richard Olebe
Department of Water Resources
Division of Safety of Dams
2200 X Street, Suite 200
Sacramento, California 95818

If you have any questions, please call me at (916) 227-9800 or Project Engineer Daniel Meyersohn at (916) 227-4624.

Sincerely,

David A. Gutierrez, Chief
Division of Safety of Dams

Enclosures

INFORMATION COVER SHEET

Draft Supplement to the San Clemente Dam Seismic Safety Project Final Environmental Impact Report/Environmental Impact Statement

California State Clearinghouse No: 2005091148

Lead Agency: California Department of Water Resources

CEQA Responsible and Trustee Agencies: California Department of Fish and Game (CDFG), California Public Utilities Commission, Monterey Peninsula Water Management District, Central Coast Regional Water Quality Control Board

Project Sponsor/Proponent: California American Water Company (CAW)

Project Title: San Clemente Dam Seismic Safety Project

Project Location: The project is located in an unincorporated area of Monterey County, California, at the confluence of the Carmel River (River Mile 18.5) and San Clemente Creek, approximately 15 miles southeast of the City of Carmel-by-the-Sea and 3.7 miles southeast of Carmel Valley Village.

Project Purpose, Need and Objectives: The need for the San Clemente Dam Seismic Safety Project including components described in the Draft SEIR is to increase dam safety to meet current design standards. The purposes and objectives for the project are to meet current standards for withstanding a Maximum Credible Earthquake and Probable Maximum Flood at San Clemente Dam, provide fish passage at the dam, maintain a point of diversion to support existing water supply facilities, water rights and services, and minimize financial impacts to California-American Water rate payers.

Abstract: The proposed project described in the December 31, 2007 Final Environmental Impact Report/Environmental Impact Statement (FEIR/EIS) has been revised by California American Water Company to meet regulatory requirements, to provide better road access to the project, and to maintain the project construction schedule.

This Draft Supplement to the final EIR (Draft SEIR) has been prepared to describe the revised project features, to analyze potential impacts associated with the changes to the project, and to propose mitigation for the impacts. California American Water Company proposes to remove San Clemente Dam and reroute the Carmel River, as described in Alternative 3 of the FEIR/EIS. As with the Proposed Project described in the FEIR/EIS, the revised Project described in the Draft SEIR will meet the purpose, need and objectives. The project will consist of bypassing about 2500 feet of the Carmel River upstream of the dam by cutting a channel between Carmel River and San Clemente Creek; constructing a diversion dike; stabilizing sediment slopes and demolishing the dam and fish ladder. The bypassed portion of Carmel River will be used as a disposal area for the accumulated sediment.

Date of Implementation: Components of the San Clemente Dam Seismic Safety Project will be implemented after certification of the SEIR and project approval. The project will be completed within three to five years, including environmental review, permitting, design, infrastructure improvements, and all aspects of construction or demolition.

List of possible permits, approvals, and licenses: See EIR/EIS Chapter 1.5 "Overview of Permit Approval and Consultation Requirements, San Clemente Dam Seismic Safety Project" for information.

Draft SEIR Public Review Period: Start Date: April 24, 2012 End Date: June 7, 2012

Location of Background Information: You may access the Draft SEIR and find more information about the project and the responsible agencies on the DWR website at: https://sanclementedam.water.ca.gov/.

Copies of this Draft SEIR are also available for public review at the following locations:

California-American Water Company Monterey Division 50 Ragsdale Drive, Suite 100 Monterey, California 93942-0951	City of Monterey Library 625 Pacific Street Monterey, California 93940
Monterey Peninsula Water Management District 5 Harris Court, Building G Monterey, California 93940	City of Carmel-by-the-Sea, Harrison Library Ocean Avenue/Lincoln Avenue City of Carmel-by-the-Sea, California 93921

To request additional copies of this Draft SEIR or for additional information, please contact:

Ms. Charyce Hatler
California Department of Water Resources
3374 East Shields Avenue
Fresno, California 93726
(559) 230-3323
chatler@water.ca.gov

Please submit comments on this Draft SEIR to:

Mr. Richard Olebe
California Department of Water Resources
Division of Safety of Dams
2200 X Street
Sacramento, California 95818
(916) 227-0533

Henrietta Stern

From: David Beech <dbeech@comcast.net>
Sent: Monday, April 16, 2012 4:56 PM
To: jlehman@redshift.com
Cc: kmarkey65@comcast.net; Henrietta Stern; Arlene Tavani
Subject: URGENT: Small Amendment for 4/16 Board Meeting, Agenda item 13

Dear Judi (or anyone who reads this),

Apologies for this late submission for tonight's Board Meeting. I have been out of town for 2 weeks, and have a conflict this evening, but noticed a small omission which I believe was unintentional. Hence I offerg the friendly amendment below as a Public Comment.

Proposed Amendment to Ordinance No. 150

In the proposed new Rule 21-A-2, replace "Applicant shall provide documentation of the Neighboring Well owners' responses to the notice, if any," by "Applicant shall provide documentation of notice to, and responses (if
any) by, Neighboring Well owners," .

Discussion

In reviewing the text of the proposed Ordinance No. 150, new Rule 21-A-2, I found that it does not correct the problem that arose in October 2010, when Neighboring Well owners were not notified. Discussion in the Rules and Regulations committee suggested that the Applicant should provide documentation of notification of Neighboring Well owners, as well as of their responses (if any), prior to testing, so that failure of notification would surface early, rather than after testing. If the owners had not been notified, then of course there would have been no responses from them, and the problem would not be detected until application of the new Rule 21-A-12. In fact, new Rule 21-A-2 could use similar wording to new Rule 21-A-12.

Thank you for your consideration.

David Beech

Received at 4/16/12 Board meeting Item 12

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

April 16, 2012

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

Re: Opposition to current Proposition 218 User Fee proceeding

Dear Chair Potter and Board Members:

The Coalition of Peninsula Businesses is opposed to the Proposition 218 protest procedure the District is proposing to use to impose a new District fee. The Coalition's present concern is about the District's proposed process regarding approval of the fee.

The Coalition would support a fee, if needed, devoted exclusively to developing an approved water supply project or participation in a portfolio of projects. The fee you currently propose appears to face legal complications.

The Coalition wants a water supply project (or projects) that will provide a sufficient and sustainable water supply for the Peninsula at a reasonable cost. The Coalition has led the demand for such a project and has pushed our local elected officials to lead that effort. Any belief that the Coalition is not supportive of a project or portfolio of projects that will provide that long-term water supply is unequivocally wrong.

The Coalition believes the people who will ultimately pay the bill 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 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 expects from its governing agencies. Just because agencies have done it this way in the past does not make it right for MPWMD today, times have changed. The public also has the right to be totally informed by MPWMD as to what the water supply project or projects are, any and all timelines, the benefit of such and the complete cost to the user.

The Coalition urges the District to discontinue its current course and instead instigate a process that allows for discussion and a vote on fees and their intended uses. We, the Coalition of Peninsula Businesses, would gladly support such a process.

Sincerely,

John V. Narigi, Co-Chair

Mike Zimmerman, Co-Chair

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

April 16, 2012

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.

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 ***to the applicant*** 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

Monterey Peninsula Water Management District
Attn: Administrator and Board of Directors
5 Harris Court, Building G
P.O. Box 85
Monterey, Ca. 93942-0085

Date: April 12, 2012

Re: Objection to Proposed User Fee Surcharge

Dear Mr. Administrator and Members of the Board,

I am submitting my formal objection to your intended application for a surcharge on my personal property as a means of collecting money for "more mitigation work on the Carmel River".

You have spent in the neighborhood of 111 million dollars over the past 30 plus years doing mitigation work on the Carmel River. The CPUC said your could no longer charge users the fee on Cal Am Water bills for many and varied reasons.

Your formal reply to that was a front page article in the Monterey Herald in which Mr. Stoldt indicated that the 3.7 million dollars you no longer have to spend made up one third (33.3 percent) of your annual budget. Your "User Fee Fact Sheet" (on your website) now states that the 3.7 million dollars amounts to 46 percent of your annual budget. If you can't get your figures right, what makes you think rate payers are willing to continue to allow you to assess us for money you spend foolishly and don't account for?

You Mr. Administrator, your Board, and your predecessors have done nothing over the past 35 plus years except spend hard earned tax payer dollars on studies, litigation, staff and benefits, your inflated salaries, and one can only imagine what else. And what do we the taxpayers, rate payers, and end users have to show for all of that? Not a sustainable water supply!! No dam on the river and no desalination plant!!

We began paying you for a dam on the Carmel River many, many years ago. Where has all of the money for that dam gone? I don't recall you asking those you serve if you could spend those funds on anything other than a dam. Since a dam is no longer a consideration, surely those funds should now be available for a desalination plant. No?

A desalination plant is fundamentally the most intelligent, feasible, and sustainable means securing a long term water supply for citizens on the Monterey Peninsula. Why are you not making this your number one priority?

Now your attitude and the "Solves it All" plan you are arrogantly and egotistically pushing in a very self serving way is your Mitigation Program. Yes Sir Mr. Stoldt, "The Law" gives you the "Power, both express and implied" necessary to carry out your edicts, but you and your board need to be reminded that when you abuse that power as you are proposing, it can and will be stripped from you.

Your intent, after only having been a part of the MPWMD for a very short period and a resident for a very, very short time, is to dump treated tertiary water into the Seaside Aquifer and have it mix with other water, and you, the MPWMD, are going to take that water somehow and sell it back to Cal Am Water? And this "mixture of treated water with water that may or may not be in that aquifer during dry years such as the one we are facing will sustain people living here how? This is your "best plan" after almost 40 years of self edification, chest pounding, pomp and pageantry, and the expenditure of millions of dollars on analyses, studies, many frivolous, and law suits etc?

Personally Mr. Stoldt, I don't trust you, the members of the board, or the people your employing for the many committees we've already had to endure over the years. I can't trust any of you to spend one more penny of taxpayer money in any form, until you can get your facts straight on what you intend to collect and use the additional 3.7 million dollars for (whether its 33% of your annual budget or 46% of your annual budget). If you have to lay off people or take a cut in pay yourself, so be it. Show us a sustainable water supply.

When you can show the people you supposedly work for the first stage of physical construction at a site for a desalination plant or a dam on the Carmel River, as an end user, rate payer, taxpayer, or whatever the "flavor of the month name" is for us, don't expect me to stand by quietly while you find other ways to squander money you are "entrusted" to spend because you are arrogant enough to think you can.

As a taxpayer, ratepayer, citizen, I formally oppose you seeking any surcharge to supplant something you have not provided. No more money MPWMD until you can spend it in totality on a sustainable long term water supply for the Monterey Peninsula. NO MORE!!

Mark S. Morgan
1124 Cielito Court
Seaside, Ca. 93955

KRONICK MOSKOVITZ TIEDEMANN & GIRARD
A LAW CORPORATION

JEFFREY L. MASSEY jmassey@kmtg.com

April 13, 2012

VIA EMAIL: dave@laredolaw.net
AND U.S. MAIL

David C. Laredo
De Lay & Laredo
606 Forest Avenue
Pacific Grove, CA 93950

Re: Ordinance 152 – Authorizing an Annual Water Use Fee

Dear Mr. Laredo:

On behalf of the Monterey County Association of Realtors ("MCAR"), I am writing you today to express serious concerns related to the Monterey Peninsula Water Management District's ("District") Ordinance 152 authorizing an annual water use fee and the process by which the District proposes to adopt this Ordinance.[1] I also recommend that you share this letter with the Board of Directors and the General Manager of the District and that the District not have a first reading of the Ordinance, which is scheduled for April 16, 2012, until the issues addressed in this letter have been fully and carefully considered.

California Environmental Quality Act ("CEQA")

Finding 38 of the draft Ordinance 152 provides that "[t]his Ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15273(a)(1) – Rates, Tolls, Fares, Charges." The problem with using this exemption is that 15273(b) provides that "[r]ate increases to fund capital projects for the expansion of a system remain subject to CEQA." Here, the purpose of this "use fee" is to build and maintain the Aquifer Storage and Recovery Project, the Groundwater Replenishment Project and a proposed future Desalination Project. While these projects may be designed to "protect District water resources, satisfy water quantity and water quality requirements, meet existing commitments for water demand, and provide sufficient water for present beneficial use," they, nevertheless, will result in the expansion of the District's water

[1] It should be noted that this letter does not address the District's past failure to comply with the Requirements of Proposition 218 in its imposition of a "use fee" through CAW. Nevertheless, the District should be aware that Pajaro Valley Water Management Agency was forced to refund over $11 million dollars to its rate payers after the Agency lost at the appellate court in *Pajaro Valley Water Management Agency v. Amrhein* (2007) 150 Cal.App.4th 1364. In any event, MCAR may address the District's past failures to comply with Proposition 218 at a later date.

of Proposition 218, but did not reach the question of whether such a fee was subject to the requirement that an agency hold a vote on the proposed augmentation fee. Subsequent to the decision in *Pajaro Valley*, the Pajaro Valley Water Management Agency published a paper entitled *Pajaro Valley Water Management Agency Proposition 218 Service Charge Adjustments – Frequently Asked Questions* in which the Agency provided as follows:

> Proposition 218 requires a Protest Hearing prior to the election authorizing the adjustment of charges. The augmentation charge, but not the delivered water charge, also is subject to voter approval by the affected property owners. If a majority of affected property owners do not protest the proposed delivered water charge adjustment, then the Agency may impose the revised charges. If a majority of affected property owners do not protest the proposed augmentation charge adjustment, the Agency may then proceed with a mail ballot election to adjust the Augmentation Charges. The Agency has determined that the Delivered Water Charge is a charge for water service and therefore exempt from voter approval under Proposition 218.

In 2010, the Agency had a vote on a new augmentation fee after the Agency had conducted a protest hearing. Most recently, the 6th District Court of Appeal noted in *Eiskamp v. Pajaro Valley Water Management District* (2012) 203 Cal.App.4th 97, that in establishing and increasing its augmentation fee "[t]he Board of Directors did not comply with the notice, hearing and ***voting*** requirements of Article XIII D, Section 6 of the California Constitution." [emphasis added.]

Thus, given that the District's "use fee," which is aimed at funding projects related to its "conservation and augmentation responsibilities," is most like the augmentation fee charged by Pajaro Valley Water Management Agency, and given the foregoing, the District should conclude that it is required to hold an election on the "use fee" after it holds the protest hearing on the "use fee." Failure to do so will result in a lack of compliance with the requirements of Proposition 218.[4]

Project Election

According to the District's enabling legislation as provided in California Water Code, Appendix section 118-453, the following shall occur:

> The board may institute works or projects for single zones, and joint works or projects for participating zones,[5] for the financing, construction, maintaining,

[4] It should be noted that Proposition 218 requires that "[r]evenues derived from a fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed." Thus, should the District properly adopt an augmentation or "use fee," no moneys raised through such a fee may be used for river mitigation, which has become a significant portion of the District's budget over the last ten years.

[5] Section 118-18 defines zone to mean "any area designated within the district created in order to finance, construct, acquire, reconstruct, maintain, operate, extend, repair or otherwise improve any work or improvement of common benefit to such area."

Conclusion

Thank you for the opportunity to comment on the Ordinance and for your consideration of this matter. This office and MCAR reserve the right to provide further written or oral comment on the Ordinance. MCAR and I look forward to continuing to work with the District to ensure that a legally adequate Ordinance establishing a "use fee" is what is ultimately considered by the District. Should the District fail to adequately address the issues raised in this letter, MCAR reserves the right to seek an appropriate legal remedy in a court of law.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

Jeffrey L. Massey

:JLM

cc: ***Transmitted PDF Via Email***
Kevin Stone, Director
Government & Community Affairs
Monterey County Association of Realtors

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Admitted in California and Nevada

March 30, 2012

VIA FIRST CLASS MAIL

SEE ATTACHED DISTRIBUTION LIST

Re: *Litigation hold and demand to preserve evidence*

This letter is to inform you the County of Monterey and the Monterey County Water Resources Agency may have legal claims against you or that you may have evidence relevant to claims the County and the Agency have against other parties. This letter is also to demand that you immediately take all steps necessary to preserve all evidence relevant to the following matters:

- The Water Purchase Agreement, approved by the Public Utilities Commission on December 2, 2010, between the Monterey County Water Resources Agency, the Marina Coast Water District and California-American Water Company.
- The Settlement Agreement between the Monterey County Water Resources Agency, the Marina Coast Water District, California-American Water Company, Monterey Water Pollution Control Agency, the Surfrider Foundation, the Public Trust Alliance and Citizens for Public Water.
- The Reimbursement Agreement, dated February 26, 2010, between the Monterey County Water Resources Agency, the Marina Coast Water District and California-American Water Company
- The California-American Water Company Credit Line Agreement, dated January 11, 2011, between the Monterey County Water Resources Agency, the Marina Coast Water District and the California-American Water Company
- The Regional Desalination Project Management Agreement, dated January 11, 2011, between the Monterey County Water Resources Agency, the Marina Coast Water District, the California-American Water Company and RMC Water and Environment.
- The preparation and circulation of all drafts and comments to the environmental impact report approved by the Public Utilities Commission on December 17, 2009 in Decision 09-12-017.

- All information submitted to the Public Utilities Commission in connection with its Decision Nos. 09-12-017, 10-08-008, 10-12-016, 11-03-049 and 11-04-035.
- All actions of the California Coastal Commission with regard to test wells or discretionary approvals related to the Regional Desalination Project.
- All information submitted to the Public Utilities Commission in connection with Application Nos. 04-09-019 and 09-04-015.
- All materials and information concerning *Ag Land Trust v. Monterey County Water Resources Agency et al.*, Monterey County Superior Court Case No. M110691.
- All agreements with Stephen P. Collins.
- All communications with Stephen P. Collins.
- All monies paid to or received from Stephen P. Collins.
- All writings addressed to, received from, authored by or that refer to Stephen P. Collins.
- Financing for the Regional Desalination Project.
- All claims of Karen Aquila against RMC Water and Environment.
- All writings addressed to, received from, authored by or that refer to Karen Aquila.
- All writings addressed to, received from, authored by or that refer to RMC Water and Environment.
- All billing records, invoices, statements, checks or writings that refer to Stephen P. Collins or to services allegedly provided or performed by him.

This demand applies to the period commencing January 1, 2009 and continuing to the present and until further notice.

Evidence relevant to these matters includes all "writings," as that term is defined in Evidence Code §250, in all formats, including writings stored electronically and all audio, magnetic, video or digital recordings on all devices or hardware, whether personal or business, wherever located, whether fixed or portable. This includes laptop computers, desktop computers, cellular phones, mobile devices, servers, ethernets and networks, and any other device capable of storing writings or information.

You are required to immediately communicate this demand to all your employees, agents and clients and insure that all actions necessary to preserve and protect all relevant evidence are immediately implemented. You are required to immediately suspend any practice or policy that provides for the destruction, deletion or purging of writings or that prevents their retention. Any practice that prevents the retention of writings, such as automatic deletion, must be immediately suspended. Any writings that have been deleted but not "double-deleted" must not be "double-deleted."

Failure to comply with this demand may be considered an act of evidence destruction or spoliation and you will be liable for all applicable civil and criminal sanctions, preclusion orders, remedies and penalties.

Very truly yours,

Mark A. Wasser
Special Counsel to the County of Monterey
and the Monterey County
Water Resources Agency

cc: Charles McKee (via e-mail)
Susan Blitch (via e-mail)
Dan Carroll (via e-mail)

See attached Distribution List

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