



Supplement to 6/12/2012 MPWMD Board Packet

Attached are copies of letters received between May 15, 2012 and June 5, 2012. These letters are also listed in the June 12, 2012 Board packet under item 18, Letters Received.

Author	Addressee	Date	Topic
Roger K. Masuda	David Stoldt	6/5/2012	MPWMD's Proposed Water Use Fee
Friends of Citizens for Public Water	MPWMD Board of Directors	5/20/2012	Decision on San Clemente Dam
John Magill	MPWMD Board	5/11/2012	Proposed Calculation of Annual Water Use Fee
Wendy Sarsfield	Bob Brower	2/27/2012	Welcome to PG&E Community Advisory Group Roundtable Series

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Lin H. Griffith, retired

Roger K. Masuda
rmasuda@calwaterlaw.com

*Celebrating Our
92nd Anniversary*

June 5, 2012

Via U.S. Mail and email

Mr. David Stoldt, General Manager
Monterey Peninsula Water Management District
5 Harris Court, Building G
PO Box 85
Monterey, CA 93942-8500

RECEIVED

JUN 05 2012

Re: MPWMD's Proposed Water Use Fee

MPWMD

Dear Mr. Stoldt:

My wife and I have owned residential property within the MPWMD since January 1986. I have been a California water attorney since 1976. My law firm specializes in water, energy, environmental, and public law matters. We are general counsel to four different types of water districts and special water counsel to Butte County. I have been following Monterey County water issues for many years now and I actively participated in the REPOG process. I have also attended MPWMD Board meetings from time to time.

The following summarizes the points made in this letter:

- Prop 218 does not confer any new legal authority on the MPWMD. The MPWMD may only impose fees, assessments, and taxes that are already authorized by its own enabling legislation and it may not impose fees where its enabling legislation requires that an assessment or tax be levied.
- The MPWMD's enabling legislation requires it to first hold an election to obtain voter approval of any proposed project whether for the benefit of specific zones or for the common benefit of the district as a whole as was done for the proposed New Los Padres Dam project.
- If voters approve a project, then MPWMD's enabling legislation as modified by Prop 218 authorizes funding by either a special tax or a benefit assessment.

- MPWMD's enabling legislation does not authorize the imposition of fees to fund projects either for the benefit of a specific zone or for the common benefit of the district as a whole.
- Funding of a project by special tax requires a two-thirds vote of registered voters.
- Funding of a project by benefit assessment requires a majority vote of property owners to approve the levying of a benefit assessment to fund the project.
- The two approval processes could occur concurrently but only registered voters can vote to approve the project and only property owners can vote to approve the levying of the benefit assessment.

MPWMD's "User Fee Fact Sheet" states,

Proposition 218 governs the ability of local governments and special districts on raising revenues. Because utility rates, fees and charges are not considered taxes or assessments, they do not require a two-thirds majority vote. Instead Proposition 218 states that utility rates, fees and charges gain approval through a majority protest hearing.

Prop 218 provides that nothing in Prop 218 shall "[p]rovide any new authority to any agency to impose a tax, assessment, fee, or charge." Cal. Constitution Art. XIII D, § 1(a). In other words, Prop 218 does not authorize a district to impose anything other than what a district is already specifically authorized to impose by its enabling legislation. Prop 218 only supersedes a district's enabling legislation where there is a direct conflict between the two. In your May 25 response to MCAR in the *Monterey Herald*, you stated, "We understand people may not like the Proposition 218 process the district is going through, but this is simply the legal process any water agency must use to enact rates and charges." Your statement is inaccurate. MPWMD is not simply "any water agency." MPWMD was formed by special legislation. MPWMD must comply with its special enabling legislation, which sets forth specific voter approval requirements for MPWMD projects. Prop 218 does not supersede those specific voter approval requirements. As shown below, Prop 218 does supersede register voter approval of benefit assessment for those projects.

MPWMD's enabling legislation is Water Uncodified Act 610 (1977) (the "Act"). The Act defines the types of fees, assessments, and taxes the District is authorized to impose. Normally, once the levy is properly classified as a fee or an assessment, then Prop 218 dictates the procedure the district must follow to legally adopt the fee or assessment. However, under the Act, all MPWMD projects must first be approved by the voters. The MPWMD's response to MCAR posted on the MPWMD's website states, "At this time, there is no need for a project election under District statute, and under section 471 of the District Law, a project that has a common benefit to the District as a whole is not subject to the voting requirement for a 'zone' or 'zones.'" This legal argument appears to be based upon Section 452 wherein the board is required to determine if a project is

(a) for the common benefit of the district as a whole, (b) for the benefit of participating zones, or (c) for the benefit of a single zone; and that Section 471 only calls for an election in a zone or participating zone. The Act contains substantial voter and property owner protections, there is no stated vote exemption for a project that benefits the district as a whole, and I understand that the only project vote ever taken in MPWMD's history was the failed November 1995 vote on the New Los Padres Dam, which certainly was for the common benefit of the district as a whole. In addition, it is my understanding that the proposed fee will not be imposed on all Cal Am users within MPWMD, only Cal Am "main system" users as disclosed in the MPWMD's updated User Fee Fact Sheet. Therefore, the board must designate at least a single zone for the projects. For the MPWMD to proceed with the imposition of a fee without first validating by court judgment that (1) it can proceed without a project vote and (2) it can fund projects by a fee is imprudent and could jeopardize the validity of any joint project agreement for the Groundwater Replenishment project or the Aquifer Storage and Recovery project and of any grant or bond financing for either project. Is MPWMD's legal counsel willing to put his legal malpractice insurance on the line to give a "clean" opinion that the district has fully complied with all applicable laws relating to the approval, ownership, and funding of any joint project of which the district is a participant?

As shown below, the second and third sentences of the Fact Sheet mischaracterizes the proposed "water use fee" as a valid fee or charge.

The "Notice of Public Hearing for Proposed Water Use Fees" that I received states that the proposed fees would be used to fund the following: (1) a proposed "Groundwater Replenishment (GWR) project"; (2) continue funding of the "Aquifer Storage and Recovery (ASR) project"; and (3) the *Monterey Herald's* correct characterization of "just about anything related to water." The Notice and you yourself have stated that the ASR and GWR are projects. While the District has published the "White Paper: The MPWMD Mitigation Program (April 2012)," the Notice does not specifically mention the Program or its activities and, therefore, fails to state that the Program or its activities are to be funded by the proposed fee.

The Act § 326(b) does give the District the power "To fix, revise, and collect rates and charges for the [1] services, [2] facilities, or [3] water furnished by it." However, the Act goes further and sets forth specific procedures, which must be complied with before jumping to a Prop 218 analysis. Section 308 addresses fixing and collecting rates and charges for services and for water furnished by it. Section 6(b)(4) of Prop 218 states, "No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question." As Margy Dunn stated in her letter to the *Monterey Herald*, the proposed fee "has absolutely no connection to the amount of water used in my house."

The term "facilities" relates to "facilities of the works" in Section 326(c). The term "works" is extensively defined in Section 14, including "facilities," and would include both the ASR and GWR projects. For works or projects, the District must comply with two

separate but related processes: (1) voter approval of the proposed project and, separately, (2) approval of the funding for the project. The Act does not authorize the District to mischaracterize a work or project as a service in order to avoid the two required separate approval processes.

Voter approval of a project. The Act § 454 requires a public hearing on any proposed project, the proposed methods and amounts of financing the project, and the inclusion or exclusion of property within the proposed geographic zone or zones to be benefited by the project. As discussed above, there is no stated vote exemption for a project that benefits the district as a whole. Sections 431 and 432 require that as a part of the project approval process, the board must establish zones that will be specifically benefited by the proposed project. Section 433 states, "The boundaries of any proposed zone which includes any territory within a city shall be submitted to the city council of such city for approval before the final adoption of the boundaries of such zone by the board." Section 455 provides that a protest by the holders of title to a majority of the assessed valuation of real property within the zone to be benefited can stop a project but the Board may reconsider the project 6 months later. If there is no majority protest, then Section 471 requires that the District hold an election on whether or not to proceed with the proposed project. Section 473 even specifies the wording of the ballot measure: "Shall the proposed work or project for Zones No. ___ in the Monterey Peninsula Water Management District be approved?" The Act does not appear to provide an exemption from the voter-approval requirement for any joint project, such as the ASR or GWR, even if they are meritorious.

Approval of funding for a voter-approved project. Sections 437 and 438 make it clear that to fund a project, the District must levy either taxes or assessments and that the levying of taxes or assessments is a process separate and apart from the vote to approve a project. As the District itself admits in its User Fee Fact Sheet, the imposition of a tax requires a two-thirds majority vote. A benefit assessment only requires a simple majority benefit-weighted vote under Prop 218. Section 438(g) states, "No [benefit] assessment authorized by this section may be imposed to pay the costs of any work or project approved . . . at an election . . . , unless at such election the question of imposing such a benefit assessment is also submitted to the voters and approved by a majority of those voters voting on the question." [Emphasis added.] Here Prop 218, as part of the State Constitution, overrules the Act as to the procedure that must be followed for imposition of a benefit assessment.

In order for a Prop 218 benefit assessment to be approved, there must be a majority ballot vote in favor of the assessment. Ballots are weighed based upon the proportionate benefit that each parcel would receive from the project. The Act § 438(c) states, "The amount of the benefit assessment imposed on any parcel of property shall be determined on the basis of estimated benefit to the property." The MPWMD's "Calculation of Annual Water Use Fee" is an example of how the assessment could be apportioned per parcel and how the voting for a special benefit assessment could be allocated (for example, each parcel would be entitled to 1 vote for each \$1 of proposed Annual Water Use Fee). Under Prop 218 benefit assessment voting, only property

Mr. David Stoldt, MPWMD

June 5, 2012

owners (including non-resident owners) are authorized to vote as opposed to registered voters.

Please don't hesitate to contact me if you, any director, or any district general or special counsel has any questions. I will be on vacation next Tuesday so I will not be able to attend the hearing.

Very truly yours,

Handwritten signature of Roger K. Masuda in black ink.

ROGER K. MASUDA

cc: MPWMD Board members



**Pacific Gas and
Electric Company™**

Government Relations
356 East Alisal Street
Salinas, CA 93901

February 27, 2012

RECEIVED

MAY 25 2012

Bob Bower
Monterey Peninsula Water Management District
5 Harris Court
Monterey, CA 93940

MPWMD

Dear Mr. Bower:

I would like to follow up on the conversation you had with Stakeholder Management Group (SMG). On behalf of PG&E we would like to welcome you to the PG&E Community Advisory Group Roundtable Series.

In the near future, we will be gathering a group of community leaders, such as yourself, to hold discussions on topics of importance to PG&E and the communities we serve. As an involved member of the community, we would like to give you an opportunity to share your insights with us. We intend to hold 2-3 gatherings at differing locales--all of them with a fun twist. We will also send you occasional email communications that we hope will be informative.

Thanks for helping us to influence the future; we value your participation. We will contact you soon about our first gathering.

Regards,

Wendy Sarsfield
Wendy Sarsfield,
Central Coast Area Manager, Government Relations

URGENT, MPWMD Chair and Directors

5/20/2012

On Thursday May 24, the CPUC will consider a decision on the San Clemente Dam. Rerouting is not the issue. The financing plan is.

The initial proposed decision issued 8 months ago capped costs, shared expenses between ratepayers and Cal Am shareholders, honored all state and federal grants, and prevented Cal Am from making a profit in this project.

Surprisingly, on April 24, CPUC Commissioner Sandoval issued an Alternate Proposed Decision that reverses all this. Under a strange argument that, although the dam was useless as a water facility, it was useful to Cal Am as a retaining wall for silt. Under this extreme argument Commissioner Sandoval has proposed the following:

- Remove the cost cap
- Move all expenses onto ratepayers
- Remove Cal Am shareholders from any share of costs
- Make ratepayers responsible for shortfalls in state and federal grants
- Add Cal Am profit onto ratepayer expenses
- Double the cost to ratepayers
- Expose ratepayers to even more costs

This book is a gift to you and your agency.
River in Ruin by Ray March chronicles the history of abuse and neglect of the Carmel River. There are no heroes. Only accomplices.

The history of exploitation is likely to be repeated. But this time the ratepayers are subject to abuse and neglect. You have choices. You might oppose Sandoval's APD, or request a postponement to June 7th, anything to help the soon-to-be overburdened ratepayer. IF you act immediately!

Object to Sandoval's APD, or suggest delay, with a personal email to public.advisor@cpuc.ca.gov Refer to A-10-09-018.

Call Danilo Sanchez, CPUC's Div. of Ratepayer Advocates for more info:
 415-703-2771

From: Friends of Citizens for Public Water
 cc: Congressman Farr, Assemblyman Monning

RECEIVED

MAY 21 2012

MPWMD

RAY A. MARCH



RIVER IN RUIN
THE STORY OF THE CARMEL RIVER



P.O. Box 538
Pacific Grove, CA 93950
May 11, 2012

Monterey Peninsula Water Management District
5 Harris Court, Building G
P.O. Box 85
Monterey, CA 93942

RECEIVED

JUN 01 2012

RE: Proposed Calculation of Annual Water Use Fee

MPWMD

I am in receipt of your recent mailing describing the calculation of your proposed Annual Water Use Fee. In my situation I am unable to use the equation provided to calculate my Annual Water Use Fee. I have a single parcel with two residences, each monitored by a separate water meter. However the two residences are different sizes one being considered small and one being considered medium large. It would appear that I would need to solve two equations but then I would have two Annual Water Use Fees but I only have one parcel and your letter indicates that the calculation as shown should provide me the Annual Water Use Fee for each parcel of real property. The alternative would be to use "2" for number of units but then I wouldn't know which value to use for water usage fee or meter fee. Maybe I should average them but there are no instructions to do so.

I suggest your letter is misleading, incomplete, or intentionally deceiving. The public deserves a clear unambiguous explanation of proposed fees and your notice fails to provide this basic information.

By this letter I am requesting you to reissue a notice that is clear and unambiguous so that all those affected by your proposal will be able to fully understand the impact of the proposed fees.

I also expect a timely response to this letter describing how you intend to proceed.

Sincerely,

John Magill
APN 001-322-012-000