



Supplement to 7/16/2012 MPWMD Board Packet

Attached are copies of letters received between May 15 2012 and June 27, 2012. These letters are also listed in the July 16, 2012 Board packet under item 17, Letters Received.

Author	Addressee	Date	Topic
Jeffrey L. Massey	David C. Laredo	6/27/12	Revised Ordinance 152 – Authorizing an Annual Water Supply Charge
Roger Masuda	MPWMD Board	6/27/12	MPWMD's Proposed Ordinance No. 152 – Invalid Effective Date
Ron Pasquinelli	Bob Brower	6/27/12	Proposed Ordinance No. 152
Andrew Bell	MPWMD Board	6/21/12	Approve User Fee
David Norris	MPWMD	6/12/12	Our Support for User Fee
Ron Pasquinelli	David Stoldt	6/14/12	Questions re Proposition 218 Protests Received
Walter L. Wagenhals	MPWMD Board	6/12/12	Proposed Ordinance No. 152
LeVonne Stone	MPWMD Board	6/12/12	Proposed Ordinance No. 152
Chuck Della Sala	David Potter	6/8/12	Support for MPWMD Pursuit of Aquifer Storage and Recovery, and Groundwater Replenishment Projects
Andrew M. Bell	Ron Pasquinelli	6/2/12	Problems with MPTA's "Important Call to Action"
John Magill	MPWMD	5/11/12	Proposed Calculation of Annual Water Use Fee

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JEFFREY L. MASSEY

KRONICK
MOSKOVITZ
& TIEDEMANN
& GIRARD
A LAW CORPORATION

jmassey@kmtg.com

RECEIVED

June 27, 2012

JUN 27 2012

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

MPWMD

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

URGENT: FOR TODAY'S MEETING**Re: Revised Ordinance 152 – Authorizing an Annual Water Supply Charge**

Dear Mr. Laredo:

On behalf of the Monterey County Association of Realtors (“MCAR”), I am writing to you today, as a follow-up to the letter that I sent to you on April 13, 2012 and the letter that I sent to you on June 11, 2012, to express some additional serious concerns related to the Monterey Peninsula Water Management District’s (“District”) *now revised* Ordinance 152 authorizing an annual water use fee (*now a water supply charge*) and the process by which the District proposes to adopt this now revised Ordinance. Please, again, share this letter with the District’s Board and General Manager. For the reasons stated below, along with the reasons already provided in the previous letters, I recommend that the District immediately suspend the process by which it is proposing to adopt Ordinance 152.

Violation of Proposition 218 and Due Process Rights:

Proposition 218 requires a public agency that is setting a new fee to send a notice of the proposed new property-related fee forty-five (45) days before the hearing on the new fee or charge. As part of that notice, the public agency must provide the reason for the new fee or charge. The District did provide the reason for the proposed fee in its notice, to build water augmentation infrastructure for delivery of water to California American Water Company’s customers: “Both ASR and GWR, collectively the “Projects,” allow subsequent recovery of the injected water by CAW for delivery to its customers.”

On June 12, 2012, the District held a hearing on the original proposed Ordinance 152 for which the notice had been disseminated. After public comment at the June 12th public hearing on the original proposed Ordinance 152, the District closed the hearing and continued

David C. Laredo
 June 27, 2012
 Page 2

consideration on the adoption of original proposed Ordinance 152. Now, the District today is proposing to adopt a new, revised Ordinance 152 that provides a new, different reason for the fee: "The District engages in a variety of activities that supply water to properties within the District via a distribution system owned by California Water." Thus, the District now needs the fee (or supply charge) so that it may build water projects to augment the water of the Seaside Groundwater Basin so that *it* (not California American) may provide water to properties within the District.

Thus, setting aside the District's inaccurate and convoluted attempt to re-characterize itself as retail provider of water, when it is, in fact, a wholesale provider of water, the District's reason for imposing this fee (or supply charge) has now changed. The reason for the fee is no longer to build water projects to augment the water supply of the Seaside Groundwater Basin so that California American Water Company ("CAW") may provide water for delivery to its customers. Thus, the reason provided for the fee (or supply charge) contained in the new proposed Ordinance 152 is not consistent with the notice that the District provided in advance of the June 12, 2012 protest hearing. As such, should the District adopt the revised Ordinance 152, it will deny all of the potential rate payers their due process rights and be in contravention of the requirements of Proposition 218.

Comments Regarding New Justifications:

Additionally, I have some serious concerns regarding the new sections of Ordinance 152 as they relate to demand and the justification for the fee structure.

Section 3, in part, addresses water demand management which relates to peaks. The District is only providing supply and not designing to meet peaks. CAW's distribution system is designed to handle peaks. Section 5 also addresses potential demand on the water system which is again a CAW issue, not a District issue. Since the District only needs to provide supply, having a meter charge to address peaks is not consistent with cost of service. Interestingly, the District changed the justification for the meter charges by saying that "meter size is a measure of potential demand on a water system (i.e., the volume of service a utility must be prepared to supply)" instead of their peaking rationale provided in the BWA memo.

Section 5 of the ordinance provides that "because the fee is to be collected on the property tax roll, it is not feasible to use metered data to calculate the volume of water served to each property; accordingly, industry-standard estimates based on the use of each parcel are employed." This rationale is suspect. It is not clear how collecting the fee on the property tax roll makes it infeasible to use metered data, which would result in a fee proportionate to the cost of providing service. Additionally, at the end of Section 4, Ordinance 152 provides that the Board may change the method of collection. It follows that if the District's logic to not use metered data because the fees will be collected on the tax roll is correct, then when the District changes its method of collection, the District would be able to use the metered data. This seems like an odd reason to not use metered data.

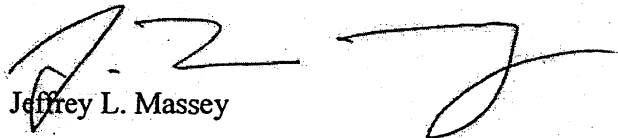
David C. Laredo
June 27, 2012
Page 3

Conclusion:

Even though I have not had sufficient time to thoroughly analyze the revised Ordinance 152 because the District decided to spring the revised ordinance a couple days before its meeting, thank you for the opportunity to comment on it and for your consideration of this matter. This office and MCAR reserve the right to provide further written or oral comment on Ordinance 152. Should the District fail to adequately address the issues raised in this letter or any of the previous letters, MCAR and other property owners reserve 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/svc

cc: Kevin Stone, Director (via e-mail)
Government & Community Affairs, Monterey County Association of Realtors

Arlene Tavani
Monterey Peninsula Water Management District (via facsimile)

RECEIVED⁵

JUN 27 2012

GRIFFITH & MASUDA

A PROFESSIONAL LAW CORPORATION

517 East Olive Street
Turlock, California 95380

(209) 667-5501

Fax (209) 667-8176

www.calwaterlaw.com

Founded 1920

W. Coburn Cook, 1892-1953
Lin H. Griffith, retired

Roger K. Masuda
rmasuda@calwaterlaw.com

MPWMD

*Celebrating Our
92nd Anniversary*

June 27, 2012

Via FAX and email

URGENT - FOR TODAY'S BOARD MEETING

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court, Building G
PO Box 85
Monterey, CA 93942-8500

Re: MPWMD's Proposed Ordinance No. 152 – Invalid Effective Date

Dear Board of Directors:

Your proposed Ordinance No. 152 states, "This Ordinance shall take effect at 12:01 a.m. on July 1, 2012." Elections Code Section 9141(b) provides that except as provided in Section 9141(a) [not applicable here], ordinances shall become effective 30 days from and after the date of final passage. Elections Code Section 9340 pertaining to referendums provides that all computations and officers of the county referred in Sections 9141 to 9147 shall be construed to refer to comparable computations and officers of a local public entity, such as the MPWMD, so don't be confused by the fact that those sections speak in terms of the county board of supervisors and the county. The 30-day requirement is to give voters the opportunity to collect signatures on a referendum petition to repeal the ordinance. Elections Code Section 9144 states:

If a petition protesting the adoption of an ordinance is presented to the board of supervisors [here the MPWMD Board] prior to the effective date of the ordinance, the ordinance shall be suspended and the supervisors [here you] shall reconsider the ordinance. The petition shall be signed by voters of the county [here voters within MPWMD] equal in number to at least 10 percent of the entire vote cast within the county [here within MPWMD] for all candidates for Governor at the last gubernatorial election."

If the requisite number of voters sign the petition and present the petition before the 30 days runs, then this Board must rescind the Ordinance No. 152 or call an election

June 27, 2012

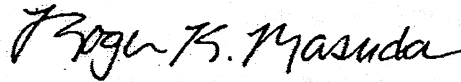
[Section 9145]. If the majority of the voters at the election approve the referendum, the ordinance is repealed.

The District is aware of the 30-day requirement. For example, Section Eight of District Ordinance No. 147 states, "This ordinance shall take effect at 12:01 a.m. on the 30th day after it has been enacted on second reading." The same wording must be substituted for the first sentence in Section Nine of proposed Ordinance No.152. Be aware that change would constitute a substantive alteration of the proposed ordinance and would require the District to reinitiate the ordinance adoption process. Failure to do so would in and of itself render the ordinance invalid.

The Board is also considering approving the filing of a CEQA Notice of Exemption for Ordinance No. 152. Since the ordinance cannot be effective until 30 days after its passage, the Notice of Exemption should not be filed with the County until those 30 days have run.

My letter dated June 5, 2012, and letters dated April 13, 2012, and June 11, 2012, by Jeffrey L. Massey of Kronick Moskovitz Tiedemann & Girard are incorporated into this letter by reference.

Very truly yours,



ROGER K. MASUDA

cc: David Stoldt, General Manager

RECEIVED

JUN 27 2012

MPWMD**Monterey Peninsula Taxpayers Association**

June 26, 2012

Bob Brower
Chair, Water Supply Committee
Monterey Peninsula Water Management District

Dear Director Brower:

After meeting, the Board of Directors of the MPTA feels that the four items (listed) represent major improvements to the proposed ordinance and have our support.

1. Include a date certain for sunset:
 - a. 5 – year overall sunset from effective date of the ordinance if no District project is identified and underway.
 - b. Sunset portion related to a debt-financed project at the end of bonding term, or earlier if security for bonds unaffected.
 - c. Sunset at date that funding for a project is transferred to CAW bill for portion attributable to that project.
2. Funds will be earmarked for water supply projects such as ASR, GWR, and Desal.
3. A citizen's advisory panel will be established that would meet quarterly to review expenditures of funds and provide reporting to the District Board. The panel cannot mandate expenditures, bind the District Board, or set policy without Board approval. The panel will include representatives appointed by the District directors, and established by separate by-law or resolution. Panel will include one member each from MCAR and MTPA and representatives of other community groups, as determined by the Board.
4. Funds available for non-project costs (administrative overhead) will be limited to 15% of project funding.

When it comes to the process we feel strongly that at the end of the day the ordinance must follow the law. We are willing to continue to work with the MPWMD to ensure the ordinance complies with the law.

Sincerely,

Ron Pasquinelli
President

3079 Hermitage Road
Pebble Beach, CA 93953

June 21, 2012

SENT VIA U.S. MAIL AND E-MAIL

Board of Directors
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942-0085

RECEIVED

JUN 25 2012

SUBJECT: Approve User Fee

MPWMD

Dear MPWMD Board of Directors:

I urge you to authorize the user fee proposed to replace a portion of the user fee that was historically collected via California American Water Company bills for water service in its main Monterey service area. The method I ask that you use is to approve the recommendation of the MPWMD General Manager as stated in the staff note for Public Hearing Item 4 in the packet for your June 12, 2012 meeting:

“... approve the second reading of, and adopt, Ordinance No. 152 and direct staff to file a Notice of Exemption for CEQA purposes.”

No additional limitations, accounting methods, or other conditions on the collection or use of user fee revenues should be approved. I understand that some groups and individuals claim that the user fee is being improperly imposed and that it will be legally challenged if additional conditions are not placed on the collection and/or use of the fee. I was deeply offended to see reported in the Monterey County Herald suggestions that MPWMD could not be trusted to perform the count of protests filed in opposition to the user fee. I know from personal experience that the Water Management District is proper, prudent and accurate in all of its work, including the collection and expenditure of its funds.

In a related matter, please see my enclosed letter to Ron Pasquinelli, President of the Monterey Peninsula Taxpayers Association.

Sincerely,



Andrew M. Bell

Enclosure: June 2, 2012 letter to Ron Pasquinelli, President, Monterey Peninsula Taxpayers Association, from Andrew M. Bell (without attachment)

cc: David J. Stoldt, MPWMD General Manager
David C. Laredo, MPWMD General Counsel

RECEIVED

JUN 15 2012

MPWMD

6-12-2012

David Norris and Laura Lee Lienk
58 Southbank Rd.
Carmel Valley, CA 93940
Laura Lienk Trust et. al.,
APN 189-501-009-000

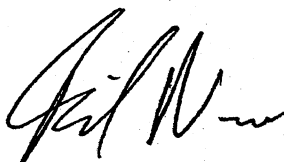
Arlene Tavani
Monterey Peninsula Water Management District
5 Harris Court
Monterey, CA 93940

RE: Our support for proposed fee.

Dear Ms. Tavani:

My wife and I support the proposed user fee that is currently being protested by various community groups. I recently marked up a postcard and returned it to one of those groups (Monterey Peninsula Taxpayer's Association or something like that) saying that they were not authorized to use our name in protest, and also offering a few suggestions about what they should do with the card and their apparent abundance of free time. If the District should receive that card with our name on it as a protest vote, or any other facsimile, it should not be counted and should be documented as a clear incident of fraud.

Thank you, and keep up the good work,



David Norris



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JUN 15 2012

MPWMD

June 14, 2012

Mr. David Stoldt, General Manager, and members of the Board
Monterey Peninsula Water Management District
5 Harris Court, Building G
PO Box 85
Monterey, CA 93942-0085

The MPWMD received over 15,000+ protest letters and forms protesting the District's proposed fee (tax) on property owners receiving water from California American Water Co. There are a number of questions which arise from the process which need answering. They are:

- How was the number of potentially valid protests needed to invalidate the tax determined?
 - The District first said it mailed out over 39,000 letters to potential protestors but now state only 30,000+ are valid California American Water Co. customers eligible to submit a valid protest. This raises additional questions. Some of them are:
 - What is the real number of protests needed to invalidate the fee (tax)?
 - How valid is that number?
- What security measures have been, and are being, taken to safeguard the protest forms that have been submitted? When election ballots for such things as bond issues and tax increases are delivered by the USPS to the Election Department someone signs for them. They are then stored in a secure manner. Questions such as the following need to be answered.
 - What was the procedure for the protests?
 - Did anybody sign them in?
 - Were they kept in a secure file cabinet? Or, were they left in an open box that any passer by could access?
 - Are they being kept in a secure manner now?
- What are the criteria for determining that submitted protests are invalid?
 - Who determined which protests are invalid?
 - Was it paid staff whose jobs may be impacted by the results of such determination? Such a process is subject to potential conflict of interest.

Monterey Peninsula Taxpayers Association, P.O. Box 15, Monterey, CA 93940

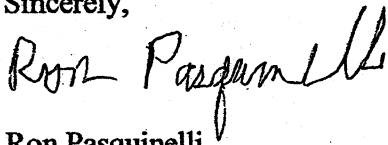
- Who is going to count and validate the protest letters and forms that have been delivered? Your comment to Mr. Paul Bruno about "Signing parties" opens up a whole field of questions such as:
 - Is it paid staff whose jobs may be impacted by the results of such a process? Again such a process is subject to potential conflict of interest.
 - The League of Women Voters were mentioned as a possibility to count and validate or invalidate protest letters and forms. They are not a neutral organization. The LWV president, Ms. Beverly Bean, wrote a full page commentary in the Monterey Coast Weekly supporting the fee (tax).

The Monterey Peninsula Taxpayers Association (MPTA) recommends that the Board of Directors scrap the proposed fee (tax) process and start over. MPTA further recommends that the MPWMD scrap the use of the Prop 218 majority protest process and instead put it to a vote of the people who will have to pay the fee (tax) in a regular style election. MPTA recommends that the MPWMD make its case to the public and let the people who will have to pay the fee (tax) decide.

If the board chooses to go ahead in the face of the overwhelming public opposition to the method of taxation determination MPTA suggests the MPWMD hire an out of the area CPA firm to count and validate the protest letters and forms.

Lastly, regardless of whether or not the District chooses to put the fee (tax) measure to a vote of the people in a regular style election MPTA recommends, that to avoid potential lawsuits, the Board put any project they propose to spend fee (tax) proceeds on to a vote of the people as is required by the District's enabling legislation.

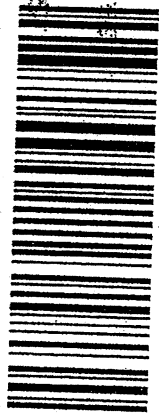
Sincerely,



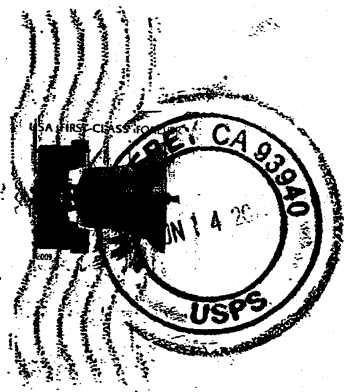
Ron Pasquinelli
President

CERTIFIED MAIL™

Monterey Peninsula Taxpayers Association
PO Box 15
Monterey, CA 93942



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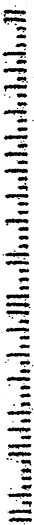
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JUN 15 2012

Mr. David Stoldt General Manager and
members of the Board
Monterey Peninsula Water Management
District
5 Harris Court, Building G
PO Box 85
Monterey, CA 93942-0085

MPWMD

**RETURN RECEIPT
REQUESTED**



93942008585

Submitted at 6/17/2012
Board Meeting 17
Item 4

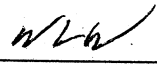
Chair and members of the Board, I'm Walter Wagenhals, a resident and owner of property in the District:

All the time, resources and energy of the District Board and personnel seem to be focusing on the count of protests, and perhaps other insubstantial items or issues. I suggest the Board refocus and pursue the course I will now suggest.

The concerned residents of the District and a number of various substantial organizations like the Chamber have raised a firestorm of protests. It appears clear this fee or tax is not wanted.

The *Herald* says if adopted the tax or fee will charge each home in the District \$39 to \$173 - "to augment other district initiatives, including new water supply studies." Let's get real Board - this water stuff has already been beaten to death by initiatives and studies galore.

In my view, the public in overwhelming numbers want you to forego any new tax or fee, and rather go out, "get with it," and get us some water. When you get the first drop to us of that new water, the public will pay for it, but in the meantime they want you to quit wasting your time and our money on this other stuff.



Walter L. Wagenhals
7 Abinante Way
Monterey CA 93940

LeVonne Stone, Fort Ord Environmental Justice Network
831-277-5241

What is the purpose of rate-payers attending and speaking at these meetings? We are not paid for gas, we are not listened to. We are not involved in the decision making process.

What is amazing to me is that the very people who are being paid with monies from the rate-payers are making the decisions as to rate increases. Salaries are a big part of the fees that we pay.

Is anyone concerned that some of us are not receiving cost of living increases or salary increases to keep up with all of the utility increases. Are any of you keeping up with decreases in available livable wage jobs?

Monterey Peninsula Water Management District means that if you use water to bath, wash clothes and dishes anywhere on the Peninsula, you are subject to whatever decision is made by the District to increase water rates.

In the draft document "Proposed Decision of Alj Bushey, dated 3/24/11, you state that "basis for calculating the user fee will not impose "a significant burden" on its customers, because the Management District adopts its budget in a "transparent public process". That the California Constitution prohibits the District from collecting more than it spends on a project.

Well, this is a process, but your decision will not be based on what the impacted public can not afford.

MONTEREY PENINSULA REGIONAL WATER AUTHORITY²¹

580 PACIFIC STREET
MONTEREY, CA 93940

*A LEADERSHIP VOICE TO ADDRESS THE PRESSING NEED OF ENSURING THE REGION CONTINUES
TO HAVE A SAFE, SUSTAINABLE, AND RELIABLE WATER SUPPLY*

June 8, 2012

Dave Potter, Chair
Monterey Peninsula Water Management District
Post Office Box 85
Monterey, CA 93942

RECEIVED

JUN 11 2012

MPWMD

Dear Chair Potter:

Monterey Peninsula residents and business owners will be hard-hit by the severe water rationing and fines anticipated in 2017 if a new alternative water supply is not developed. Now is the time for the community to come together and support those responsible for delivering a solution.

The Monterey Peninsula Water Management District is the agency on the Peninsula charged with monitoring and managing our water supply. As a public agency with an elected body representing the entire Peninsula, the District should play a key role in solving our water crisis.

The District has a key role in the aquifer storage and recovery (ASR) and groundwater replenishment (GWR) projects. Not only are these projects part of the current Cal Am proposal, but there is strong community support for a diversified water supply portfolio. We believe multiple projects, as opposed to reliance on a single, large desal plant, will result in a lower cost supply with a better likelihood of completion by December 31, 2016.

ASR is the only project that has increased our water supply in the last 20 years. In fact, according to Monterey Peninsula Water Management District, it has delivered more than 4,000 acre-feet of water since it began operations. This is the cheapest new water supply available to us.

The District has partnered with the Monterey Regional Water Pollution Control Agency to deliver a GWR project. This project can deliver a third of the replacement water needed, and is in line with the State's goal of increasing reuse of existing water supplies.

Both these projects have a public ownership element and can likely be delivered by the State's cease-and-desist deadline of Dec. 31, 2016. For these reasons, we support the District in its pursuit of ASR and GWR.

Sincerely,



Chuck Della Sala

President

Cc: David Stoldt, General Manager

Chuck Della Sala, President

Jason Burnett, Director

Felix Bachofner, Vice President

Jerry Edelen, Treasurer

David K. Pendergrass, Director

Carmelita Garcia, Secretary

3079 Hermitage Road
Pebble Beach, CA 93953

June 2, 2012

Ron Pasquinelli, President
Monterey Peninsula Taxpayers Association
P.O. Box 15
Monterey, CA 93942

RECEIVED
JUN 05 2012
MPWMD

SUBJECT: Problems with MPTA's "Important Call to Action"

Dear Mr. Pasquinelli:

My wife and I are in receipt of MPTA's letter and postcard asking that we protest the Monterey Peninsula Water Management District's (MPWMD) proposed user fee. I take exception with MPTA's assertions in regard to MPWMD's proposal.

First, on the envelope is the following direction: "Stop the Water Tax!" I can't help but believe you don't know that the user fee MPWMD collected via California American Water (Cal-Am) bills in the past and the one now proposed are not taxes, but user fees. You and MPTA could at least say words to the effect that MPWMD's proposal is similar to a tax, or tantamount to a tax. But to call it a tax is incorrect and misleading. Perhaps MPTA should consider changing its name to "Monterey Peninsula Taxpayers and User-Fee-Payers Association."

Second, on the letter that came with your mailing, and in your past writings, are assertions to the effect that MPWMD has not contributed to solutions to the Monterey Peninsula area's water supply problems. As you must know, this is incorrect. Please see my guest commentary in the April 24, 2012 issue of The Monterey County Herald (enclosed). In my commentary I describe some of the efforts, both successful and unsuccessful, of MPWMD in regard to augmenting the area's water supply.

Third, if you and MPTA wish to have a productive role in controlling the costs of efforts to resolve our area's water supply problems, I suggest you become active in California Public Utilities Commission (CPUC) proceedings regarding Cal-Am's applications to recover its costs. Cal-Am's expenditures are much greater than other entities', and as a private business Cal-Am's dealings are not transparent, other than those that appear in its applications to the CPUC and in its advertisements, for which we also pay.

Sincerely,

Andrew M. Bell

Andrew M. Bell

Enclosure: Guest Commentary by Andrew Bell in The Monterey County Herald, April 24, 2012

20120602.Letter to Ron Pasquinelli, MPTA.doc

bc: David Stoldt, MPWMD (without enclosure)

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

RE: Proposed Calculation of Annual Water Use Fee

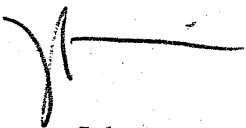
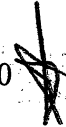
I am in receipt of your recent mailing describing the calculation of your proposed Annual Water Use Fee. In my situation I am unable to use the equation provided to calculate my Annual Water Use Fee. I have a single parcel with two residences, each monitored by a separate water meter. However the two 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 is 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 

RECEIVED

MAY 15 2012

MPWMD