Supplement to January 22, 2024
MPWMD Board Packet

Attached are copies of letters sent and/or received between **December 1, 2023** and **January 12, 2024**. These letters are listed in the Monday, January 22, 2024 Board Packet under Letters Received.

Author	Addressee	Date	Topic
Eric J. Benink	MPWMD Board and David Stoldt	12/1/2023	Class Claims for Refunds of Water Supply Charge (Ordinance No. 152) Against MPWMD
Margaret-Anne Coppernoll	MPWMD Board and David Stoldt	12/23/2023	Public Comment related to LAFCO Latent Powers Rehearing
David J. Stoldt	Brent Robinson	12/27/2023	RE: Notice Denying Claim (Gov. Code, § 913)
David J. Stoldt	Eric J. Benink, Esq.	12/27/2023	RE: Notice Denying Claim (Gov. Code, § 913)
David J. Stoldt	Naval Support Activity Monterey, US Army Garrison Presidio of Monterey, US Coast Guard Station Monterey, Marlana Brown, Stephen P. Bickel	12/29/2023	New Water Supply Allocation Process
David J. Stoldt	Michael La Pier	12/29/2023	New Water Supply Allocation
Margaret-Anne Coppernoll	MPWMD Board David Stoldt Ron Weitzman	1/8/2024	Another thought re LAFCO

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December 1, 2023

RECEIVED
DEC 04 2023
MPWMD

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

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

RE: Class Claims for Refunds of Water Supply Charge (Ordinance No. 152)
Against Monterey Peninsula Water Management District

Dear Members of the Board of Directors and Mr. Stoldt:

Please be advised that this firm represents Richards J. Heuer III, a resident of the City of Monterey, CA. Mr. Heuer hereby submits a claim for refund of Water Supply Charges imposed by the Monterey Peninsula Water Management District (District) pursuant to Ordinance No. 152 on behalf of himself and property owners in the County of Monterey who paid such charges. The period of time for which refunds are sought is one year prior to the date of this claim and continuing until the District ceases the imposition of the Water Supply Charge.

The legal basis for the claim is set forth in the attached Order Granting Petition for Writ of Mandate and Request for Declaratory Relief ("Order") issued by the Hon. Carrie M. Panetta of the Superior Court of California, for the County of Monterey on March 3, 2023. In sum, the District failed to sunset the Water Supply Charge when it reinstated its User Fee on Cal-Am customers; the Water Supply Charge is illegal.

Mr. Heuer's address is:

Richards J. Heuer III
47 Alta Mesa Circle
Monterey, CA 93940

Mr. Heuer requests that notices be sent to:

Eric J. Benink, Esq.
Benink & Slavens, LLP.
8885 Rio San Diego Dr., Suite 207
San Diego, CA 92108
(619) 369-5252
eric@beninkslavens.com

The date, place, and circumstances giving rise to the claim are set forth in the Order. The indebtedness, obligation, injury, damage, or loss incurred is the amount of the Water Supply Charge imposed by the District on property owners. In 2022-2023, that amount was approximately $3.4 million. Accordingly, the claim exceeds $10,000 and the claim would not be a limited civil case.

The names of the public employees or employees causing these injuries are David J. Stoldt, and the members of the Board of Directors who were in a position to sunset the Water Supply Charge after the User Fee was reinstated, but failed to do so.

We were unable to locate a claim form on the District's website. If the District offers such a form and requests that it be utilized, please forward it to my attention immediately.

If you believe this claim is deficient in any respect, please advise. Thank you.

Sincerely,

Eric J. Benink

cc: Michael Colantuono, Esq. (via email)
Matthew Slentz, Esq. (via email)

Attachment: March 3, 2023 Order Granting Petition for Writ of Mandate and Request for Declaratory Relief

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 03/03/2023
By Deputy: Olalia, Sonia

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

MONTEREY PENINSULA TAXPAYERS' ASSOCIATION, INC., a California nonprofit corporation; and RICHARDS J. HEUER III, an individual, Petitioners, vs. THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT, a California public agency; and DOES 1 through 10, Respondents.	21CV003066 **ORDER GRANTING PETITION FOR WRIT OF MANDATE AND REQUEST FOR DECLARATORY RELIEF**

On December 20, 2022, in Department 14 of the above-referenced court, the Honorable Carrie M. Panetta heard Petitioner Monterey Peninsula Taxpayers' Association, Inc. and Richards J. Heuer III's ("Petitioners") Petition for Writ of Mandate. Eric Benink and Prescott Littlefield appeared for Petitioners and Matthew Slenz appeared for Respondent the Monterey Peninsula Water Management District ("Respondent" or "the District").

The court read and considered the papers filed in support and in opposition of the Petition for Writ of Mandate and oral argument presented at the hearing, and good cause appearing therefrom, the Court hereby GRANTS the Petition for Writ of Mandate.

The court makes the following findings.

I. Factual and Procedural Background.[1]

As alleged in the Petition, water service on the Monterey Peninsula is principally supplied by California-American Water Company ("Cal-Am"), an investor-owned water supplier. Cal-Am owns a water supply, storage and distribution system on the Monterey Peninsula that provides

[1] The facts outlined below are taken from the administrative record.

service to 100,000 residents. However, because Cal-Am is not a government agency, in 1977 the California Legislature established the District "to carry out such functions which only can be effectively performed by government, including, but not limited to, management and regulation of the use, reuse, reclamation, conservation of water and bond financing of public works projects." (Wat. Code App. § 118-2.) The Legislature conferred upon the District broad powers to manage and regulate water use and distribution in the Monterey Peninsula area. (*Id.* at §§ 301-494.)

Beginning in 1983, the District imposed a User Fee on Cal-Am customers. The User Fee was set at 8.325% of Cal-Am's charges for water, and was collected by Cal-Am, which remitted it to the District. In 2009, the California Public Utilities Commission ("CPUC") ruled that Cal-Am could no longer collect the User Fee. At that time, the annual amount collected through the User Fee was approximately $3.7 million and constituted nearly half of the District's budgeted revenues.

Faced with this loss, which resulted in insufficient funding for the District's operating and capital expenses and new water supply activities, the District began to explore ways to "restore the collection of the user fee or otherwise collect a similar amount through a surcharge." (October 11, 2011 Water Supply Planning Committee Report; see also January 23, 2012 Board Report referencing Committee's recommendation to examine alternative approaches.) The need for an alternative fee was particularly acute given the fact that the District was facing an urgent need to supplement its water supplies. This was due to, among other things, a July 6, 1995 State Water Resources Control Board's order that Cal-Am reduce its diversions from the Carmel River system and limitations that had been placed on Cal-Am's ability to produce water from the Seaside Groundwater Basin pursuant to the judgment in *California American Water Company v. City of Seaside* (No. M66343).

The District's Board of Directors (the "Board") retained a consultant to prepare a rate study for a Proposition 218 hearing process. On March 28, 2012, the District's rate consultant presented the Board with a "User Fee Alternatives Study." The presentation stated that the "[f]ee must recover $3.7 million per year from about 43,500 connections" and one of the goals of the study was to "replace [the] existing user fee."

Following these presentations, the Board conducted a public hearing on April 16, 2012, to discuss its proposal to "establish an alternative user fee collection mechanism." The District's rate

consultant presented a "User Fee Study" which stated that the goal was to "replace [the] existing user fee." At the end of the April 16, 2012 meeting, the Board adopted the rate study and implemented a Proposition 218 hearing process. It also approved the first reading of Ordinance No. 152, entitled "An Ordinance of The Board of Directors of the Monterey Peninsula Water Management District Authorizing an Annual Water Use Fee to Fund Water Supply Services, Facilities and Activities Needed to Ensure Sufficient Water is Available for Present Beneficial Water Use in the Main California American Water Distribution System" (the "Ordinance"). The original version of the Ordinance did not have a sunset date. Instead, it provided that "[t]he District shall require the annual water use fee to sunset in full or in part unless the Board determines that the purpose of the fee is still required, and the amount of the fee is still appropriate."

On June 12, 2012, as part of the Proposition 218 hearing process, the District conducted a public hearing to consider the proposed Water Use Fee. At this hearing, there was significant public opposition to the proposed fee from individuals and groups, including Petitioners. The District did not take action on the Ordinance at that time but instead continued the matter to June 19, 2012.

At the June 19, 2012 meeting, the District's General Manager David Stoldt indicated that 15,709 protest letters had been received, but only 10,343 were valid. Board member Robert Brower advised that there had been a Water Supply Committee meeting earlier in the day with members of the public who had expressed concerns about the fee, and the dialogue was scheduled to continue. Brower further recommended deferring any action on the adoption of the Ordinance until after the meeting with community members, stating the District was trying its best to earn public support for the proposed fee. The Board agreed to continue consideration of the Ordinance to June 27, 2012.

On June 25, 2012, the Water Supply Committee met and discussed various areas of compromise. It also developed five conditions that would be presented to the Board at the June 27, 2012 meeting, including the condition that there be a date certain for sunsetting the proposed fee. At the June 27, 2012 Board meeting, General Manager Stoldt presented a PowerPoint stating that the District had met with community representatives and had, among other things, reached a "compromise and agreement" in the form of "stronger 'sunset' provisions." The Board then

approved (4-1) an amended ordinance which authorized and established the Water Supply Charge[2] effective July 1, 2012. The "Findings" portion of the Ordinance indicated that the purpose of the Water Supply Charge was to "replace and augment the former charge collected by CAW[3] on its bills to water customers" while the section titled "Section Three: Purposes" stated the purpose of the Ordinance was to "fund District water supply activities" and "ensure sufficient water is available for present beneficial use or uses[.]"

The Ordinance, as adopted, also included a new sunset provision:

> Notwithstanding any other provision of this Ordinance, the District shall not collect a water supply charge pursuant to this Ordinance: (a) in Fiscal Year 2018-2019 (or any subsequent fiscal year) if no District project is identified by the Board of Directors to have been underway as of December 31, 2017, (b) to the extent alternative funds are available via a charge collected on the California American Water Company bill, or (c) to the extent the Board of Directors determines that the charge (or portion thereof) is no longer required because bonds financing a specific project having [sic] been repaid.

(Ordinance No. 152, § 10C.)

In 2016, after an ongoing challenge by the District to the CPUC's decision to prohibit Cal-Am's collection of the User Fee, the California Supreme Court set aside the CPUC's decision in *Monterey Peninsula Water Management District v. Public Utilities Commission* (2016) 62 Cal.4th 693. On October 17, 2016, the District adopted Resolution 2016-18 which ordered Cal-Am to "continue to set and remit the User Fee at 8.325% of each [Cal-Am] water bill[.]" Since that time, the District has collected both the Water Supply Charge and the User Fee.

On September 28, 2021, Petitioners filed a petition for writ of mandate seeking that the District be enjoined from any further collection of the Water Supply Charge. The petition includes two causes of action. The first cause of action for writ of mandate alleges the District had a clear, present and ministerial duty to comply with both the Ordinance (§ 10) and Proposition 218 (Cal. Const., article XIII D, § 6, subd. (b)(2)). Petitioners plead that the District was required to cease the collection of the Water Supply Charge to the extent alternative funds were being collected via the User Fee on the Cal-Am water bill pursuant to the Ordinance. Additionally, Petitioners contend the District was required to reduce the Water Supply Charge by the amount of the User Fee and its

[2] Earlier versions of the ordinance and various Board documents referred to this charge as a "water use fee."

[3] The Ordinance refers to Cal-Am as "CAW."

failure to do so has resulted in revenue from the Water Supply Charge being utilized for purposes other than that for which the fee or charge was imposed in violation of Proposition 218. The second cause of action seeks declaratory relief.

II. Request for Judicial Notice.

The court finds, and the Petitioners agree, that the documents requested to be judicially-noticed are not necessary to resolving the issues raised in the Petition.

III. The Continued Imposition of the Water Supply Charge Violates the Ordinance's Sunset Provision.

Petitioners contend that the District was required to stop collection of the Water Supply Charge to the extent alternative funds were being collected via the User Fee based on the Ordinance's sunset provisions. Section 10 of the Ordinance, titled "Effective Date; Review Requirements; Sunset," includes three relevant subdivisions:

Subdivision A governs the effective date of the Ordinance and states that the Ordinance "shall not have a sunset date, provided however, that charges set by this Ordinance shall not be collected to the extent proceeds exceed funds required to achieve the Purposes of this Ordinance[.]" (Ordinance, § 10, subd. (A).)

Subdivision B ("Section 10B") discusses the annual review requirement whereby the District Board "shall review amounts collected and expended in relation to the purposes for which the Water Supply Charge is imposed." (Ordinance, § 10, subd. (B).) This provision states the District "shall require the annual water supply charge to sunset in full or in part unless the Board determines that the purpose of the charge is still required, and the amount of the charge is still appropriate and less than the proportionate cost of the service attributable to each parcel on which the charge is imposed." (*Ibid.*) "If the purpose is fully accomplished, the charge shall be required to sunset. If the purpose for the charge is determined to continue, but amounts needed to fund that purpose are decreased, the charge shall be reduced to that lesser amount." (*Ibid.*) This subdivision also states that in the event the aggregate annual charge collections are insufficient to fund all appropriate purposes to which the charge may be expended, the Board has the discretion to determine which purposes will be funded so long as the charge does not exceed the proportionate cost of service. (*Ibid.*)

Subdivision C ("Section 10C" or the "Sunset Provision") is the primary subject of the parties' dispute, and enumerates three circumstances under which the Water Supply Charge shall not be collected under the Ordinance. This subdivision states: "*Notwithstanding any other provision of this Ordinance*, the District shall not collect a water supply charge pursuant to this Ordinance: (a) in Fiscal Year 2018-19 (or any subsequent fiscal year) if no District project is identified and determined by the Board of Directors to have been underway as of December 31, 2017, (b) ***to the extent alternative funds are available via a charge collected on the California American Water Company bill***, or (c) to the extent the Board of Directors determines that the charge (or portion thereof) is no longer required because bonds financing a specific project having [sic] been repaid." (Ordinance, § 10, subd. (C), emphasis added.)

Petitioners and the District disagree about the meaning of the phrase "to the extent alternative funds are available via a charge collected on the [Cal-Am] bill." While Petitioners assert that alternative funds are "available" and trigger the sunset provision of the Ordinance once the User Fee is reinstated in any measure, the District contends that funds from the User Fee are "available" only if they are not committed to other District obligations, such as conservation, mitigation and general overhead. The District argues the Board has determined that alternative funds from the User Fee are not available because revenues from the User Fee have been required to fund other costs, including those related to mitigation and conservation surcharges the District retired, and those required to pay off loans the District took out for its water supply projects.

The issue presented concerns the proper interpretation of the Sunset Provision. As such, the court will apply the rules of statutory construction, which also apply to the interpretation of ordinances. (*Chaffee v. San Francisco Pub. Libr. Com.* (2005) 134 Cal.App.4th 109, 114.) Specifically, the Court will "turn first, to the words of the statute, giving them their usual and ordinary meaning." (*Id.* at 114.) "When the language of a statute is clear, [courts] need go no further. However, when the language is susceptible of more than one reasonable interpretation, [courts] look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (*Ibid.*)

"[S]tatutory ambiguities often may be resolved by examining the context in which the language appears and adopting the construction which best serves to harmonize the statute

internally and with related statutes. Moreover, statutes must be construed so as to give a reasonable and common-sense construction consistent with the apparent purpose and intention of the lawmakers – a construction that is practical rather than technical, and will lead to wise policy rather than mischief or absurdity. [Citation.] In approaching this task, the courts may consider the consequences which might flow from a particular interpretation and must construe the statute with a view to promoting rather than defeating its general purpose and the policy behind it. [Citation.]…Ultimately, [i]f a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed." (*Pac. Merch. Shipping Ass'n v. Newsom* (2021) 67 Cal.App.5th 711, 725-26, internal citations and quotation marks omitted.)

A. Plain Language of the Sunset Provision.

In reviewing the plain language of Section 10C, the Court finds that the word "available" is clear. The ordinary meaning of the word "available" is "able to be bought or used." (Cambridge Dictionary Online (2023) https://dictionary.cambridge.org/us/dictionary/english/available [as of January 27, 2023]; see also Merriam-Webster Dict. Online (2023) https://www.merriam-webster.com/dictionary/available [as of January 27, 2023] ["present or ready for immediate use"]; see also *Ross v. Blake* (2016) 578 U.S. 632, 642 ["[T]he ordinary meaning of the word "available" is " 'capable of use for the accomplishment of a purpose,' and that which 'is accessible or may be obtained.' " [*Booth v. Churner*] 532 U.S., at 737–738 (quoting Webster's Third New International Dictionary 150 (1993)); see also Random House Dictionary of the English Language 142 (2d ed. 1987) ("suitable or ready for use"); Black's Law Dictionary 135 (6th ed. 1990) ("useable"; "present or ready for immediate use")."].)

The court finds that once Cal-Am began collecting the User Fee again, the District was able to use the funds from that fee because those funds were both present and accessible. As such, funds from a charge collected on the Cal-Am water bill are "available" and Section 10C requires the Water Supply Charge to sunset.

The District asserts the User Fee funds are only "available" if the District has not already committed such funds to other uses. For example, the District points out that since the enactment of the Water Supply Charge, it has embarked on various capital projects (such as the Aquifer Storage and Recovery Project and Pure Water Monterey Groundwater Replenishment Project)

which require funding from the Water Supply Charge revenues. It also asserts that it has used and committed funds from the Water Supply Charge to fund a $4 million Rabobank loan. Further, the District states that after the User Fee was reestablished on the Cal-Am water bill, the District discontinued about $3 million in surcharges it had been collecting on customers' bills for conservation and mitigation; thus, the mitigation and conservation programs require nearly all the User Fee proceeds, leaving little for the water supply program. As such, the District concludes that funds from the User Fee are not "available" and the Sunset Provision has not been triggered.

The Court is not persuaded. Although it may be that the District has chosen in its discretion to retire certain surcharges and use the proceeds from the reinstated User Fee for other purposes, this does not render those funds *unable* to be used. To the contrary, those funds are still very much present, accessible and useable, even if the District has, for the time being, chosen to commit those funds elsewhere. The Court also notes that if the word "available" was interpreted in the manner argued by the District, it could be that funds from the User Fee will *never* become available as there are any number of projects the District may choose to embark on in its efforts to address the Monterey Peninsula water supply issues.

Furthermore, if the word "available" was susceptible to the District's interpretation, this would render the plain language of the Sunset Provision ambiguous as it would be susceptible to either party's interpretation. The Court would then be required to resort to other extrinsic aids, such as "the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (See *Chaffee v. San Francisco Pub. Libr. Com.* (2005) 134 Cal.App.4th 109, 114.) Even under this analysis, the Court finds that Petitioners' interpretation of the Sunset Provision is more tenable and consistent with the legislative history and the language of the Ordinance as a whole.

B. Legislative History Behind Establishment of the Sunset Provision.

In looking at the history behind the enactment of the Ordinance, it is undisputed there was significant public opposition to the Water Supply Charge when it was first presented to the public. The June 12, 2012 District Board meeting minutes indicate that 11,783 protests were submitted to the Board and 34 individuals publicly commented about the Ordinance at the meeting, largely to

express opposition to the charge. This level of opposition is significant as 15,255 valid protests were required for there to have been a majority protest against the imposition of the charge and 15,709 raw protests were ultimately received, though only 10,343 of those were deemed valid. (Ordinance, Finding No. 14.)

In the face of significant opposition to the proposed charge, the record indicates the District met with community representatives regarding the proposed Ordinance on June 19 and June 25, 2012, to try and address the concerns they had related to the Water Supply Charge. (See, e.g., 6/25/12 Water Supply Planning Committee discussion item indicating that the committee "invited round table discussion from community representatives" at its 6/19/12 meeting regarding "[a]reas of potential compromise on the proposed annual water supply charge" including "a) Limiting expenditures to 'water projects' only, b) Establishing a sunset date, c) Creation of an oversight committee"; Final Minutes from 6/25/12 Water Supply Planning Committee meeting where the committee developed five conditions that would be presented to the District Board at the 6/27/12 meeting, including various suggestions for sunsetting the provision; Slides from the 6/27/12 District Board meeting indicating that meetings were held with community representatives to discuss "Topics of Compromise & Agreement" including "Stronger 'Sunset' Provisions".) One of the District Board Directors, Robert Brower, mentioned at the June 19, 2012 Board meeting that the Water Supply Committee had met with community members who expressed concerns regarding the Ordinance and was "trying [its] best to earn the public support and public opinion support[.]"

As a result of those meetings, it appears that the District made some fairly significant changes to the Ordinance. This is evident from a comparison of versions of the Ordinance that preceded the community meetings with the version that was ultimately enacted. For example, while the "Findings" section in prior versions of the Ordinance focused on the District's general need to fund various water supply projects to ensure sufficient water would be present for beneficial use due to constraints that had been placed upon Cal-Am's ability to deliver water, the version of the Ordinance that was ultimately adopted still acknowledged the District's need to supplement its water supplies due to the Carmel River ruling, but also brought to the forefront the issue that the District "no longer had access to CAW bills." Similarly, while the "Purposes" section of the Ordinance indicated that proceeds from the Water Supply Charge could only be used

to fund water supply activities, the "Findings" in the Ordinance stated that the purpose of the charge was to replace and augment the charge previously collected by the User Fee. (Compare April 16, 2012 and June 12, 2012 versions of Ordinance with June 27, 2012 and enacted versions of Ordinance.) As such, there was a shift from the Ordinance expressing a general need for funds for District water supply activities to emphasizing that the User Fee needed to be replaced.

Even more significantly, the final version of the Ordinance included a revised sunset provision that explicitly tied the collection of the Water Supply Charge to funds that could be collected through the User Fee. Whereas prior versions of the Ordinance merely provided that the District Board would determine annually if the charge was still required and sunset the charge if not, the version of the Ordinance that was actually enacted specified the previously-quoted three conditions under which the Water Supply Charge would have to sunset. The District itself indicated at its June 27, 2012 Board meeting that this was a "stronger 'sunset' provision", presumably because the District had replaced a sunset provision based largely on Board discretion with a provision that established three automatic triggers for sunsetting the Water Supply Charge. The strength of this provision seems further confirmed by the fact Section 10C indicated that it would be effective "*[n]otwithstanding any other provision of th[e] Ordinance*," signaling the intent that this provision would trump other provisions of the Ordinance. (See *Tan v. Superior Ct. of San Mateo Cnty.* (2022) 76 Cal.App.5th 130, 138 ["When the Legislature intends for a statute to prevail over all contrary law, it typically signals this intent by using phrases like 'notwithstanding any other law' or 'notwithstanding other provisions of law.'"].)

Based on the foregoing, it seems apparent that after the District's meetings with community members, there was a shift that occurred in the language of the Ordinance which placed much more emphasis on the Water Supply Charge serving as a replacement for the prior User Fee, and not merely a means to generally raise revenue to fund water supply projects. There also was a revision to the Ordinance that tied the longevity of the charge to the availability of funds from the User Fee whereas, previously, the Ordinance provided the charge would sunset at the discretion of the District Board. Both modifications suggest that, as a concession and compromise in response to strong opposition to the Water Supply Charge, the legislative intent was to automatically sunset the Water Supply Charge once alternative funds from the User Fee could be accessed and used.

C. Construction of Section 10C in Context of Ordinance as a Whole.

The Court observes that interpreting the Sunset Provision as being automatically triggered once the User Fee is reinstated is a more reasonable construction when the Sunset Provision is read in the context of the Ordinance as a whole. The District would have the Court construe "available" to mean that funds from the User Fee are available only insofar as the District has not otherwise decided to allocate the User Fee funds for other purposes. This reading would confer broad discretion to the District in determining when the User Fee funds are actually available, as illustrated by the actions the District has taken since the User Fee was reinstated.

For example, at a District Board meeting that took place on October 19, 2020, a few years after the User Fee had been reinstated, several District Directors indicated a desire to phase out the Water Supply Charge sooner, believing this is what was promised to the taxpayers. In response, General Manager Stoldt responded: "I think we all had dreams of getting the user fee back on and all the water supply projects would be over *so we didn't need the water supply charge*." (*Ibid.*, emphasis added.) But, he went on to assert that even if the District did not have any water supply projects and had a big surplus in the User Fee, the District "would have to look at the user fee, also, for…personnel and services that are related to the water-supply projects." He further indicated that though the District "can't just bank money for the sake of banking money…there are sensible levels of reserves" and "[t]here are things that [the Board] ha[s] identified, setting a little something away for OPEB and pension-fund liabilities, and so forth." Later in the meeting, Stoldt stated the following:

> We've funded the water supply projects to date at a deficit to the water-supply charge. And so, to the extent the Board wishes to reimburse the other funds which have been used to do inter-fund borrowing for water-supply projects, that's a continuing obligation. All of these that I'm speaking of can go away. Unrelated to water-supply projects, **if the Board says, in our general duties, we want to fund more of the pension liability, or, we want to fund more of the OPEB on an annual basis, then that just simply means you don't have an extent alternative funds are available yet. I can move all the money from the left-hand pocket to my right-hand pocket, but it doesn't mean that I've now covered everything that I want to do.**

(Emphasis added.) Stoldt added: "So, I'm grateful that the user fee's coming in over expectations, ***but I've already identified some other use for that. That kind of discussion is really a Board-policy discussion***. It needs to had [sic] before you just lockstep decide to take, hey, we collected

more than we said we would. Let's use it all on reducing the water-supply charge or things that are circuited [sic] the water-supply charge."

In short, the record makes clear that the District views the issue of whether User Fee funds are "available" as a Board decision based on whether the charge is still "need[ed]," and to the extent the District identifies other uses for the User Fee or has other things it "want[s] to do" with that money (including funding more of the District's pension liability), the Water Supply Charge cannot sunset. In other words, the District reads the Sunset Provision as sanctioning the continuation of the Water Supply Charge so long as the District determines the charge is still needed.

But, the Court observes, this interpretation of Section 10C would render it virtually indistinguishable from another provision in the Ordinance. Specifically, the Court notes that Section 10B of the Ordinance, which existed *before* the District met with community members, states that the District shall annually review the amounts collected through the Water Supply Charge and "require [it] to sunset in full or in part *unless the Board determines that the purpose of the charge is still required[.]*" "If the purpose is fully accomplished, the charge shall be required to sunset. If the purpose for the charge is determined to continue, but amounts needed to fund the purpose are decreased, the charge shall be reduced to that lesser amount." If the court construes "available" as meaning the Board can continue to deem funds unavailable as long as they believe the Water Supply Charge is still required, this would render Section 10B superfluous. Such a result is to be avoided. (See *Branciforte Heights, LLC v. City of Santa Cruz* (2006) 138 Cal.App.4th 914, 937 ["[A]n interpretation that renders statutory language a nullity is obviously to be avoided."].)

Further, if Section 10C were read as conferring upon the District the same amount of discretion as that conferred upon it through the sunset provision in Section 10B, it is patently unclear how Section 10C could have been framed by the District Board as a "stronger" sunset provision that operates "[n]otwithstanding" any other provision in the Ordinance. Instead, the sunset provisions in Section 10B and 10C can only be read harmoniously if Section 10B is construed as generally conferring upon the District the broad discretion to sunset the Water Supply Charge whenever it determines the charge is no longer required, while Section 10C is understood as enumerating three circumstances in which the District's broad discretion to sunset the charge is trumped and the Water Supply Charge is automatically required to sunset in some fashion. These

circumstances include the situation where alternative funds become available through a User Fee collected on the Cal-Am bill

D. Conclusion.

For all of the above reasons, the Court agrees with Petitioners that funds from a charge collected on the Cal-Am water bill were "available" once the District resumed collecting the User Fee. At that point, some sunsetting of the Water Supply Charge was automatically required. In this regard, the Court notes that the Sunset Provision required the District to sunset the Water Supply Charge "to the extent" alternative funds were being collected through the Cal-Am User Fee. Courts have construed the phrase "to the extent" as a term of limitation and qualification. (See, e.g., *Aozora Bank, Ltd. v. 1333 N. California Boulevard* (2004) 119 Cal.App.4th 1291, 1296 [construing "to the extent" as a qualifier that limited a carve-out provision to the extent of the waste itself]; *Oltmans Constr. Co. v. Bayside Interiors, Inc.* (2017) 10 Cal.App.5th 355, 366 [observing that the phrase "to the extent" is a qualification and citing numerous cases where courts have construed such language as limiting an indemnitor's liability].) In the context of the Sunset Provision, the reasonable construction of "to the extent" is that there will be a pro rata reduction of the Water Supply Charge for every dollar that is collected through the User Fee. When the User Fee proceeds meet or exceed the Water Supply Charge revenue, the Water Supply Charge must sunset in full.

IV. The Continued Imposition of the Water Supply Charge Did Not Violate Proposition 218.

Proposition 218 added Articles XIII C and XIII D to the California Constitution. These articles provide for voter approval for local government general taxes and special taxes, and set forth procedures, requirements and voter approval mechanisms for local government assessments, fees and charges. (*Howard Jarvis Taxpayers Ass'n v. City of Roseville* (2002) 97 Cal.App.4th 637, 640.) Article XIII D, section 6, subdivision (b) establishes "Requirements for Existing, New or Increased Fees and Charges" and states in relevant part that "[a] fee or charge shall not be *extended, imposed, or increased* by any agency unless it meets all of the following requirements," including the requirement that "[r]evenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed." (Cal. Const., art. XIII D, § 6,

subd. (b)(2), emphasis added.) Article XIII D, section 6, subdivision (d) provides that "[b]eginning July 1, 1997, all fees or charges shall comply with this section."

The District contends that maintaining the Water Supply Charge at existing rates does not amount to an extension of a fee or charge because the Ordinance does not have a *fixed* sunset date. Petitioners argue that the District extended the Water Supply Charge when it renewed the charge at each annual Board meeting. Government Code section 53750, enacted as part of the Proposition 218 Omnibus Implementation Act, states that when applied to an existing tax or fee or charge, "extended" means "a decision by an agency to extend the stated effective period for the tax or fee or charge, including, but not limited to, amendment or removal of a sunset provision or expiration date." (Gov. Code, § 53750, subd. (e).) Although the Ordinance states it "shall not have a sunset date, the use of the phrase "including, but not limited to" is generally a term of enlargement. (*Rea v. Blue Shield of California* (2014) 226 Cal.App.4th 1209, 1228.) Therefore, although the Ordinance does not have a specific sunset date that can be amended or removed, that is not dispositive. Here, where the Ordinance at issue specifically provides for an annual review of a charge to determine if it is still needed and the amount is still appropriate, the annual decision to continue imposing the Water Supply Charge constitutes an extension of the charge.

The court is not persuaded by Respondent's argument that there would be a perpetual election season if Proposition 218's notice, hearing, protest and election requirements were applied to the mere continued existence of a fee. By its clear terms, Article XIII D, section 6, subdivision (a)'s notice and hearing requirements only apply to "New or Increased Fees and Charges," and not to fees and charges that merely continue to exist. Nor is there any merit to the District's assertion that the language in subdivision (d) merely directs "agencies [to] conform existing fees to the requirements of subdivision (b)(1) through (b)(5) by the stated date of July 1, 1997" citing *Howard Jarvis Taxpayers Assn. v. City of Fresno* (2005) 127 Cal.App.4th 914, 924.

The *Howard Jarvis* court did not hold that Article XIII D, section 6, subdivision (d) only requires agencies to conform fees that existed at the time of Proposition 218's enactment of the requirements for fees and charges under subdivision (b). Rather, in the face of the City of Fresno's contention its in lieu fee was not a "fee" because it had not been formally extended, the court held that "Section 6, subdivision (b) requires that a city or agency that acts to extend, impose, or increase a fee after the effective date of Proposition 218 must comply with the requirements of

subdivision (b)(1) through (5)" and that "section 6, subdivision (d) clearly requires, *in addition*, that cities and other agencies conform existing fees to the requirements of subdivision (b)(1) through (b)(5) by the stated date of July 1, 1997." (127 Cal.App.4th at 924, emphasis added.) As such, the *Howard Jarvis* court did not state that subdivision (d) *only* applies to charges already in existence when Proposition 218 was enacted. Nor would such an interpretation make sense because the plain language of that provision states without limitation that "[b]eginning July 1, 1997, ***all*** fees or charges shall comply with this section." (Cal. Const., art. XIII D, § 6, subd. (d), emphasis added.)

Additionally, the District suggests that because the Sixth District Court of Appeal found that the Water Supply Charge complied with Proposition 218 when it was first enacted, that charge is forever immunized from further challenge. Once again, the language of Article XIII D, section 6, subdivision (b) indicates that the requirements are ongoing. Therefore, the Court does not interpret Article XIII D's provisions as suggesting a charge can somehow be insulated from further review simply because it was deemed to be in compliance with Proposition 218 at one point in time.

Notwithstanding the above, the court agrees with the District that its ongoing imposition of the Water Supply Charge does not violate Proposition 218. It does not appear to the court that the Water Supply Charge has been utilized for a "purpose other than that for which the fee or charge was imposed" under Article XIII D, section 6, subdivision (b)(2). The findings in the Ordinance state the "purpose [of the ordinance]...is to replace and augment the former charge collected by CAW on its bills to water customers with a supply charge collected from owners of parcels that receive from the District through CAW's distribution system." (Ordinance, Findings, ¶ 10.) The findings also state the "Supply Charge proceeds will be expended only to fund water supply services and for no other purpose." (*Id.* at ¶ 18.) As for the substantive portion of the Ordinance, Section Three lists the "Purposes" as follows:

> Proceeds of the charge imposed by this Ordinance may only be used to fund District water supply activities, including capital acquisition and operational costs for Aquifer Storage and Recovery (ASR) and Groundwater Replenishment (GWR) purposes, as well as studies related to project(s) necessary to ensure sufficient water is available for present beneficial water use in the main CAW system. In addition to direct costs of the projects, proceeds of this annual water supply charge may also be expended to ensure sufficient water is available for present beneficial use or uses,

> including water supply management, water demand management, water augmentation program expenses such as planning for, acquiring and/or reserving augmented water supply capacity, including engineering, hydrologic, legal, geologic, financial, and property acquisition, and for reserves to meet the cash-flow needs of the District and to otherwise provide for the cost to provide services for which the charge is imposed.

There is no indication the Water Supply Charge has not been used for the purpose of replacing the User Fee and funding the District's water supply activities. In fact, the record indicates the Water Supply Charge has likely *not* been used for any purposes other than to fund water supply activities because the revenues from the charge have not even been sufficient to cover water supply costs. (See, e.g., 10/19/20 District Board Meeting Transcript [indicating there are loans the District took out to fund aquifer storage and recovery along with "inter-fund borrowing for water supply projects," and further stating the District has "funded the water supply projects to date at a deficit to the water-supply charge"]; 2013-2020 Water Supply Charge Revenue & Expenditures [indicating the District's expenditures for water supply costs have always exceeded the proceeds of the Water Supply Charge].)

As such, the Court finds that no violation of Proposition 218 occurred.

V. Disposition

Accordingly, the Petition for Writ of Mandate is granted solely on the basis that the continued collection of the Water Supply Charge, after the User Fee was reinstated and collected on the Cal-Am bill, violated the Ordinance's Sunset Provision. The District is ordered to cease the imposition and collection of the Water Supply Charge by the amount of the User Fee.

IT IS SO ORDERED.

Date: 3/3/2023

The Honorable Carrie M. Panetta
Judge of the Superior Court

Re: Class Claims for Refund of Water Supply Charge (Ordinance No. 152) Against Monterey Peninsula Water Management District

I, Robin Griffin, declare that I am employed with the Law Office of Benink & Slavens, LLP, whose address is 8885 Rio San Diego Drive, Suite 207, San Diego, California, 92108. My electronic service address is robin@beninkslavens.com; I am not a party to this cause. I am over the age of eighteen years.

I further declare that on **December 1, 2023**, I served a copy of the following documents:

1. **LETTER TO BOARD OF DIRECTORS MONTEREY PENINSULA WATER MANAGEMENT DISTRICT DATED DECEMBER 1, 2023**
2. **ORDER GRANTING PETITION FOR WRIT OF MANDATE AND REQUEST FOR DECLARATORY RELIEF**
3. **PROOF OF SERVICE**

on the interested parties listed below:

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

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

[X] BY USPS OVERNIGHT MAIL. I enclosed the documents in an overnight express mail envelope or package provided by the United States Postal Service addressed to the persons at the addresses listed above. I placed the envelope or package for overnight express mail delivery with the United States Postal Service at San Diego, CA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **December 1, 2023.**

Robin Griffin

MPWMD: Margaret-Anne Coppernoll Public Comment re LAFCO, December 23, 2023:

From my viewpoint, MPWMD does not need to revisit the latent powers activation application with LAFCO or seek court endorsement. Why? Here are my reasons:

1. The District already activated its 1978 authorized latent powers with its retail water distributions currently operational, thereby setting a precedent. Shouldn't the MPWMD Founding Charter document suffice as irrefutable, definitive evidence that MPWMD does in fact have the legal authority to activate its legally granted "latent powers," which MPWMD consummated a long time ago, allowing it to distribute retail water to its existing customers? If any ambiguity had existed, wouldn't authorities have already questioned MPWMD's actions? Since there has been no legal objection there should be no need to seek court approval, just as there is no reason for a LAFCO re-hearing, particularly since there is obvious commissioner bias that has no ostensible remediation. A court judge would have to uphold the legal stipulations laid out in the original 1978 MPWMD Founding Charter, per my understanding.
2. The Court Decision and order to LAFCO to set aside its denial decision should be sufficient going forward, with the

added bonus of the Court ordering LAFCO to pay MPWMD's attorney fees.

3. LAFCO staff recommended approval based on the governing Cortese-Knox-Hertzberg Act law as well as expert professional analyses that demonstrated MPWMD's buyout of CalAm is operationally and financially feasible, a proviso of Measure J.
4. LAFCO reversed its own staff's approval recommendation in contravention of the CKH Act provision that commissioners must vote in the public interest as a whole and not for personal or special interests or the interests of appointing organizations. Offending commissioners refused upon request to recuse themselves, thus sustaining disapproval. They will more than likely do so again despite the Court Decision ordering LAFCO to set aside its previous denial decision.
5. Heavy CalAm lobbying and litigation costs are passed onto its ratepayers. CalAm's influence was evident in its intervening in the court hearing on this issue of denial. Based on past behavior, CalAm will probably devise a way to adversely impact any future LAFCO revisit action, as part of its strategy to impose the unwanted, unnecessary MPWSP, block PWM Expansion's successful implementation, and derail pending eminent domain buyout court proceedings.
6. A revisit to LAFCO may well encounter the same unfair obstacles, plus add additional expense to the effort.

7. Since latent powers are already active, the District, per my understanding, is only seeking to **expand the scope** of these latent powers via the Resolution of Necessity/Eminent Domain buyout action, and the expansion of its jurisdictional boundaries as approved by LAFCO. Since these latent powers are not in reality latent, since they are currently, as in the past, actively operational, no requirement exists to obtain approval from LAFCO. Did LAFCO have to approve the current use of these powers? Did LAFCO's disapproval cause MPWMD to stop all current retail water distribution obligations? It is my understanding that latent powers were authorized as part of the 1978 original District Charter without LAFCO involvement. In fact, approval was implied, I think, when LAFCO granted approval for MPWMD to expand its boundary jurisdiction to include 58 additional parcels. To then afterwards deny MPWMD's latent powers seems arbitrary and capricious, particularly since those latent powers have already been active for an extensive decades-long period. Was LAFCO ignorant of this fact? It seems that this obstruction of justice and CKH Act violation was unduly biased and intended to deny citizens their constitutional rights under Measure J and the public interest as a whole in favor of personal interests. It is abhorrent, in my opinion, that LAFCO failed to honor or respect the professional courtesy exhibited in MPWMD's filing for confirmation even when latent powers did not

require LAFCO's agreement or approbation, since, as stated, MPWMD's latent powers had long ago been legitimately fully activated and operational. It was an in-tandem adjunct to the boundary jurisdiction expansion application to provide clarity.

8. Given all the above reasons, I urge you to consider NOT revisiting LAFCO with another application for latent powers approval because such approval is not required and would be superfluous, from my perspective. The media stated MPWMD must decide on two options: LAFCO rehearing or court filing. A third possible choice: proceed full-speed ahead with eminent domain using the MPWMD Founding Charter document as infallible proof of lawful latent powers activation authority, along with successful track record on-going operational and financial documentation. The Measure J voters and all our affected communities deserve no less as they have patiently struggled and suffered to achieve freedom from soulless corporate water tyranny and environmental injustice for decades.
9. The Resolution of Necessity contains the crucial comprehensive compilation of Findings with Evidence necessary to obtain serious court consideration for the eminent domain filing and to inspire court approval. In and of itself the filing is without question a superbly presented stand-alone, meticulously vetted, and analyzed landmark document.

Please allow me to express profound gratitude for this monumental, ground-breaking effort in support of Measure J, the voters' constitutional right to water freedom and affordability. Measure J is indisputably in the public interest and has escalated to the level of an existential public necessity. MPWMD's Filing for an eminent domain court hearing was a most propitious and urgently needed action.

We wish you the very best success in all your endeavors, along with God's Blessing.

Margaret-Anne Coppernoll, Ph.D.

/s/ Margaret-Anne Coppernoll

Email: mcopperma@aol.com

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

December 27, 2023

To: Brent Robinson
Aiman-Smith & Marcy
7677 Oakport Street
Suite 1150
Oakland, California 94621

Re: Notice Denying Claim (Gov. Code, § 913)

Mr. Robinson,

Notice is hereby given that the claim that you presented on behalf of Ms. Cari McCormick to the Monterey Peninsula Water Management District dated June 28, 2023, but received on August 10, 2023, was rejected on December 27, 2023.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6. This time limitation applies only to causes of action for which Government Code sections 900–915.4 requires you to present a claim. Other causes of action, including those arising under federal law, may have different time limitations.

Ms. McCormick may seek the advice of an attorney of her choice in connection with this matter. If she desires to consult an attorney, she should do so immediately.

Sincerely,

David J. Stoldt
General Manager
Monterey Peninsula Water Management District

cc: David Laredo, MPWMD General Counsel

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

December 27, 2023

Eric J. Benink, Esq.
Benink & Slavins, LLP
8885 Rio San Diego Dr., Suite 207
San Diego, CA 92108

Re: Notice Denying Claim (Gov. Code, § 913)

Mr. Benink,

Notice is hereby given that the claim that you presented on behalf of Mr. Richards J. Heuer III to the Monterey Peninsula Water Management District dated December 1, 2023 was rejected on December 27, 2023.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6. This time limitation applies only to causes of action for which Government Code sections 900–915.4 requires you to present a claim. Other causes of action, including those arising under federal law, may have different time limitations.

Mr. Heuer may seek the advice of an attorney of his choice in connection with this matter. If he desires to consult an attorney, he should do so immediately.

Sincerely,

David J. Stoldt
General Manager
Monterey Peninsula Water Management District

cc: David Laredo, MPWMD General Counsel
Michael Colantuono
Matthew Slentz

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

VIA EMAIL & US MAIL

December 29, 2023

CAPT Paul Dale, Commanding Officer
Naval Support Activity Monterey
271 Stone Road.
Monterey, CA 93943

COL Samuel Kline, Garrison Commander
Office of the Garrison Commander
US Army Garrison Presidio of Monterey
1759 Lewis Rd. #210
Monterey, CA 93944

LT Matthew Peryea
US Coast Guard Station Monterey
100 Lighthouse Ave.
Monterey, CA, 93940

RE: New Water Supply Allocation Process

Gentlemen:

The Monterey Peninsula Water Management District (District or MPWMD) will be conducting a process whereby new water supply from the Pure Water Monterey (PWM) Expansion project will be allocated to jurisdictions on the Monterey Peninsula for use in the future development of non-residential and residential projects. Your organizations are invited to participate and assist the District in ensuring that an appropriate amount of water is designated for your use sufficient to meet your project needs in the future.

Jurisdictional Allocations

District Rule 30 states "From any new supply of water, the District shall establish a specific Allocation for each Jurisdiction, and may also establish a District Reserve Allocation. Each permit issued by the District that results in an increased capacity for water use shall cause an equivalent quantity of water to be debited from the appropriate Allocation account when there is no alternative water entitlement or credit available to the property. The District may establish distinct Allocations or water entitlements as necessary to manage water supplies throughout the District."[1]

[1] Rule added by Ordinance No. 1 (2/11/80); amended by Ordinance No. 6 (5/11/81); Ordinance No. 39 (2/13/89); Ordinance No. 60 (6/15/92); Ordinance No. 125 (9/18/2006)

District Rule 33.A directs the District to issue permits to authorize new or intensified water use supplied from the California-American Water Company for use in any jurisdiction pursuant to the application and approval process set forth in District Rule 23. The total quantity of new or intensified water use in each respective jurisdiction, or "Jurisdictional Allocation", has been periodically established by the District through ordinances.[2] District Rule 33.D set forth that there will be no further allocation of water until an adequate water supply is established.[3]

Pure Water Monterey Expansion

The Pure Water Monterey project currently provides the service area 3,500 acre-feet of water per year (AFY), approximately 38% of the region's supply. The proposed PWM Expansion will provide an additional 2,250 AFY. PWM Expansion is under construction: The Advanced Water Purification Facility Expansion contractor (Overaa & Co.) was given Notice to Proceed (NTP) August 14, 2023 and is proceeding with all long-lead time equipment procurement and construction activities. Injection Wells Phase 4, the other PWM Expansion construction project, is also under construction. Specialty Construction Inc. (SCI) had their NTP issued on October 5th.

The new PWM Expansion facilities are expected to be operational by the end of 2025. Hence, it is appropriate at this time to begin the process of establishing new Jurisdictional Allocations with an intent to have the first phase of allocations in place by September 2024.

Department of Defense Jurisdiction

Under District law, "Jurisdiction" shall mean one of the following: (1) Carmel-by-the-Sea, (2) Del Rey Oaks, (3) Monterey City, (4) Monterey County, (5) Monterey Peninsula Airport District, (6) Pacific Grove, (7) Sand City, (8) Seaside, and (9) Department of Defense. The first 8 Jurisdictions were established in 1992, but the Department of Defense was added in 2021.[4]

Further, the 2021 ordinance defined "Department of Defense Site" as all facilities and properties owned by one or more branches of the United States Department of Defense that are located within the MPWMD and that are supplied water by California-American Water. Department of Defense Sites include Army, Navy, and Coast Guard.[5]

The District believes the applicable Army properties include the Presidio of Monterey and the Defense Language Institute, but exclude Army (Presidio) properties on the old Fort Ord which are served by Marina Coast Water District, not California-American Water. In effect, we are concerned with properties south of Military Avenue in Seaside. Thus, we would be considering Navy properties at Naval Postgraduate School, Fleet Numerical Meteorology and Oceanography Center, Naval Research Lab, La Mesa Village, facilities under NAVFAC Southwest, the Monterey Pines golf course, or any other Navy facilities in the District and served by California-

[2] Rule added by Ordinance No. 70 (6/21/93); amended by Ordinance No. 73 (2/23/95); Ordinance No. 84 (8/16/96); Ordinance No. 86 (12/12/96)
[3] Added by Ordinance No. 84 (8/16/96)
[4] Added by Ordinance No. 60 (6/15/92); amended by Ordinance No. 187 (6/21/2021)
[5] The District recognizes that the U.S. Coast Guard is part of the Department of Homeland Security, not the Department of Defense. It was included as a convenience for District Rules and Regulations

American Water. We understand the Coast Guard facilities to be limited to USCG Station Monterey.

The Water Allocation Process

The District will be conducting meetings with the nine affected jurisdictions (see above) through its Technical Advisory Committee (TAC). The goal is to allocate a portion of the new supply provided by PWM Expansion such that each jurisdiction has an exclusive right to a known quantity of water to meet its development and permitting needs for a ten- to fifteen-year period. Subsequent allocations will be made as needed based on where growth is occurring.

The first step for Department of Defense properties is for each member (military branch) to attempt to define its future needs utilizing the attached response forms. The District will attempt to assign required water capacities based on the type of needs described in your responses. ***We request that you submit your response forms by Friday March 1, 2024.***

The District will convene its TAC in early March. During the TAC meeting process, participants will discuss future water needs (demand) for both non-residential and residential uses. Also, to be addressed will be already existing Jurisdictional Allocations, water entitlements available to certain jurisdictions, differences between Regional Housing Needs Allocation (RHNA) and population forecasts, and the impact of water losses. As a newly created "Jurisdiction" some of these additional issues will not apply to the Department of Defense.

Please include Stephanie Locke, locke@mpwmd.net, on your responses.

Sincerely,

David J. Stoldt
General Manager
Monterey Peninsula Water Management District

cc: Marlana L. Brown, Naval Support Activity Monterey
Stephen P. Bickel, US Army Garrison Presidio of Monterey
Stephanie Locke, MPWMD

New Water Supply Allocation Process
Response Form

Submittal

Please complete and submit by March 1, 2024

Send to Stephanie Locke at locke@mpwmd.net

Responder

Name of Entity: _____

Contact Name: _____

Contact Address: _____

_____

_____

Contact Email: _____

Contact Phone: _____

Does Responder wish to appoint a contact for District Technical Advisory Committee meeting attendance? If yes, name of contact _____ email _____

Does Responder have a current or recent Facilities Master Plan for properties under Responder's purview? If so, attach or provide link: _____

Project Details

Below we ask for your planned/proposed projects reasonably expected to occur in two future periods: (i) within the next 15 years, and (ii) 16-30 years. In the table please be attentive to these types of use and the form of "units" for each type of use.

Type of Use	Units
Classroom, Lecture Hall, Office, Clinic, Warehouse, Retail (PX), Gym, Church, or Assembly Spaces. Laboratories/Research see Special Circumstances note.	Square Feet
Dormitories	# of Beds
Multi-Unit Housing (non-dormitory)	# of Units
Single-Family Housing	# of Units
Day Care	# of Children
Barber Shop or Salon	# of Stations

Laundromat (Stand-Alone)	# of Machines
Short-Term Visitor Accommodations (e.g. hotel style)	# of Bedrooms
Food Service – Disposable Tableware or Take-Out	Square Feet
Food Service – Full Service or Cafeteria-style with Washable Tableware	# of Seats
Bar – Minimal Food Service	Square Feet
Swimming Pool	Square Feet

Below, please identify projects, uses, and units. For renovations to existing facilities, include "Existing Units Removed" to derive "Net New Units." For raw land new projects enter "0" for "Existing Units Removed". For multi-use projects, break into component elements. Do not include projects to be served by on-site well water.

Proposed/Planned Projects 1-15 Years

Project #	Project Name	Type of Use	New Units Added	Existing Units Removed	Net New Units
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

(Duplicate page if more lines are necessary)

Proposed/Planned Projects 16-30 Years

Project #	Project Name	Type of Use	New Units Added	Existing Units Removed	Net New Units
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

(Duplicate page if more lines are necessary)

Special Circumstances

For any of the projects identified above, please identify any of them that may involve special circumstances for water usage. Consider the following questions below:

- For any of the projects identified above are there unique or special uses of water? For example, laboratories for hydrosystems, non-closed loop heat exchangers, evaporative cooling systems, sterilization, medical or surgical procedures, car washes, etc?

- Is there a plan to replace existing flush toilets or irrigation with recycled or "greywater"?

- Are there current building renovation plans that do not change square footage, but substitute higher efficiency heating or cooling than existing potable water central steam or cooling?

- Has your service branch completed an Installation Energy and Water Plan (IEWP) pursuant to the Federal plan titled "Improving Water Security and Efficiency on Installations", a report to Congress under the Secretary of Defense for Acquisition and Sustainment in April 2019? Has there been an update?

- Are there any other water efficiency retrofits or water savings plans you would like to describe?

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

VIA EMAIL & US MAIL

December 29, 2023

Michael La Pier
Executive Director
Monterey Peninsula Airport District
200 Fred Kane Drive, Suite 200
Monterey, CA 93940

RE: New Water Supply Allocation Process

Dear Mike:

The Monterey Peninsula Water Management District (District or MPWMD) will be conducting a process whereby new water supply from the Pure Water Monterey (PWM) Expansion project will be allocated to jurisdictions on the Monterey Peninsula for use in the future development of non-residential and residential projects. The Monterey Peninsula Airport District (MPAD) is invited to participate and assist the District in ensuring that an appropriate amount of water is designated for your use sufficient to meet your project needs in the future.

Jurisdictional Allocations

District Rule 30 states "From any new supply of water, the District shall establish a specific Allocation for each Jurisdiction, and may also establish a District Reserve Allocation. Each permit issued by the District that results in an increased capacity for water use shall cause an equivalent quantity of water to be debited from the appropriate Allocation account when there is no alternative water entitlement or credit available to the property. The District may establish distinct Allocations or water entitlements as necessary to manage water supplies throughout the District."[1]

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[1] Rule added by Ordinance No. 1 (2/11/80); amended by Ordinance No. 6 (5/11/81); Ordinance No. 39 (2/13/89); Ordinance No. 60 (6/15/92); Ordinance No. 125 (9/18/2006)
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[3] Added by Ordinance No. 84 (8/16/96)

Pure Water Monterey Expansion

The Pure Water Monterey project currently provides the service area 3,500 acre-feet of water per year (AFY), approximately 38% of the region's supply. The proposed PWM Expansion will provide an additional 2,250 AFY. PWM Expansion is under construction: The Advanced Water Purification Facility Expansion contractor (Overaa & Co.) was given Notice to Proceed (NTP) August 14, 2023 and is proceeding with all long-lead time equipment procurement and construction activities. Injection Wells Phase 4, the other PWM Expansion construction project, is also under construction. Specialty Construction Inc. (SCI) had their NTP issued on October 5th.

The new PWM Expansion facilities are expected to be operational by the end of 2025. Hence, it is appropriate at this time to begin the process of establishing new Jurisdictional Allocations with an intent to have the first phase of allocations in place by September 2024.

Monterey Peninsula Airport District

Under District law, "Jurisdiction" shall mean one of the following: (1) Carmel-by-the-Sea, (2) Del Rey Oaks, (3) Monterey City, (4) Monterey County, (5) Monterey Peninsula Airport District, (6) Pacific Grove, (7) Sand City, (8) Seaside, and (9) Department of Defense. The first 8 Jurisdictions were established in 1992, and the Department of Defense was added in 2021.[4]

The Water Allocation Process

The District will be conducting meetings with the nine affected jurisdictions through its Technical Advisory Committee (TAC). The goal is to allocate a portion of the new supply provided by PWM Expansion such that each jurisdiction has an exclusive right to a known quantity of water to meet its development and permitting needs for a ten- to fifteen-year period. Subsequent allocations will be made as needed based on where growth is occurring.

The first step for is for MPAD to attempt to define its future needs utilizing the attached response forms. The District will attempt to assign required water capacities based on the type of needs described in your responses. ***We request that you submit your response forms by Friday March 1, 2024.***

The District will convene its TAC in early March. During the TAC meeting process, participants will discuss future water needs (demand) for both non-residential and residential uses. Also, to be addressed will be already existing Jurisdictional Allocations, water entitlements available to certain jurisdictions, differences between Regional Housing Needs Allocation (RHNA) and population forecasts, and the impact of water losses. As a newly created "Jurisdiction" some of these additional issues will not apply to the Department of Defense.

Please include Stephanie Locke, locke@mpwmd.net, on your responses.

[4] Added by Ordinance No. 60 (6/15/92); amended by Ordinance No. 187 (6/21/2021)

Sincerely,

David J. Stoldt
General Manager
Monterey Peninsula Water Management District

cc: Stephanie Locke, MPWMD

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

New Water Supply Allocation Process Response Form

Submittal

Please complete and submit by March 1, 2024

Send to Stephanie Locke at locke@mpwmd.net

Responder

Name of Entity: _____

Contact Name: _____

Contact Address: _____

_____

_____

Contact Email: _____

Contact Phone: _____

Does Responder wish to appoint a contact for District Technical Advisory Committee meeting attendance? If yes, name of contact _____ email _____

Does Responder have a current or recent Facilities Master Plan for properties under Responder's purview? If so, attach or provide link: _____

Project Details

Below we ask for your planned/proposed projects reasonably expected to occur in two future periods: (i) within the next 15 years, and (ii) 16-30 years. In the table please be attentive to these types of use and the form of "units" for each type of use.

Type of Use	Units
Terminal, Office, Retail, Warehouse, Storage, Public Safety, Mechanical/Repair	Square Feet
Food Service – Disposable Tableware or Take-Out	Square Feet
Food Service – Full Service or Cafeteria-style with Washable Tableware	# of Seats
Bar – Minimal Food Service	Square Feet
Public Toilet	# of Toilets
Public Urinal	# of Urinals
Public Safety – Dormitory	# of Beds

Below, please identify projects, uses, and units. For renovations to existing facilities, include "Existing Units Removed" to derive "Net New Units." For raw land new projects enter "0" for "Existing Units Removed". For multi-use projects, break into component elements. Do not include projects to be served by on-site well water.

Proposed/Planned Projects 1-15 Years

Project #	Project Name	Type of Use	New Units Added	Existing Units Removed	Net New Units
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

(Duplicate page if more lines are necessary)

Proposed/Planned Projects 16-30 Years

Project #	Project Name	Type of Use	New Units Added	Existing Units Removed	Net New Units
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

(Duplicate page if more lines are necessary)

Special Circumstances

For any of the projects identified above, please identify any of them that may involve special circumstances for water usage. Consider the following questions below:

- For any of the projects identified above are there unique or special uses of water? For

example, non-closed loop heat exchangers, evaporative cooling systems, sterilization, showers/changing rooms, car washes, etc?

- Are there any hangers, storage, or warehouse space that are unconditioned and have no water connection (e.g. bathrooms, utility sinks, hose bibs)?

- Is there a plan to replace existing flush toilets or irrigation with recycled or "greywater"?

- Are there current building renovation plans that do not change square footage, but substitute higher efficiency heating or cooling than existing potable water central steam or cooling?

- Are there any other water efficiency retrofits or water savings plans you would like to describe?

From: Dave Stoldt
To: Mary L. Adams; Alvin Edwards; Amy Anderson; George Riley; Ian Oglesby; Karen Paull; Marc Eisenhart; District 5
Cc: Sara Reyes
Subject: FW: Another thought re LAFCO
Date: Tuesday, January 9, 2024 5:51:54 PM

Please see attached correspondence, below.

From: mcopperma@aol.com <mcopperma@aol.com>
Sent: Monday, January 8, 2024 5:09 PM
To: Alvin Edwards <alvinedwards420@gmail.com>
Cc: Dave Stoldt <dstoldt@mpwmd.net>; Ron Weitzman <ronweitzman@redshift.com>
Subject: Another thought re LAFCO

Hello Alvin,

After the WRAMP meeting this morning another concern popped up in my mind. I hope it is okay to email message you about the seemingly endless CalAm threats and the most recent one. I copy General Manager, Dave Stoldt, so he is in the loop, hoping this message does not violate any board communication protocols. I apologize in advance for any goofs on my part. I also copy WRAMP President, Dr. Ron Weitzman, since this was a topic on the agenda we discussed this morning. All of us are rooting for MPWMD's successes as well as having profound gratitude to you and the MPWMD board and staff for your heroic courage and dedication to righteousness in upholding the public good.

Based on CalAm's past behavior, it seems that CalAm's strategy is to instill fear into MPWMD board members re LAFCO by threatening another lawsuit over latent powers. This is another tactic to attempt to derail eminent domain. The threat is, I think, meant to scare the board into revisiting LAFCO so CalAm can work its corrupt influence again - so LAFCO staff could be compelled again to deny, which would be unfortunate for the eminent domain court proceeding. Their brazen attitude and disregard for their own governing law proves that another outcome could very well again be negative. No need to muddy the waters, at which CalAm is an expert. Returning to LAFCO now would amount to grovelling for an approval that the MPWMD already possesses from a higher authority, the state legislature in 1978. The latent powers were already enacted (was it around 1996 that MPWMD activated its latent power? - not sure of the date). A show of reticence or a lack of resolve could inspire a less than desired result and be taken as weakness. Bullies only understand strength and resistance.

A return to LAFCO would be an acknowledgement, in my opinion, that LAFCO has leverage over MPWMD. That is not true, I believe. MPWMD has the higher authorities in its favor: its foundational charter, its latent powers activation, the court denial decision, and the initial LAFCO staff approval that was based on all the professional expert feasibility and financial analyses favoring MPWMD. Seems like

LAFCO is the entity that is off-course and does not merit a return visit that would only embolden it in its overweening false pride attitudes and actions.

Show confidence in this legal foundational charter, the recent Wills court decision, and the expert analyses supporting the buyout's financial and operational feasibility. They constitute the bedrock for moving forward. CalAm is flailing against windmills, like Don Quixote, inflating more charges for ratepayers.

Alvin, I base this rationale solely on my perspective of this new CalAm threat wrinkle, repeating some of what I previously submitted to the board with added context. LAFCO staff recommended approval, then disapproval due to undue CalAm influence, probably $ or other form of leverage, such as its threats in sent-out flyers that CalAm rates will increase for remaining customers if the buyout is successful, causing those customers to complain to Lopez. Lopez used that possibility as an excuse to deny even though there is legal documentation establishing that his community has 'disadvantaged community' lower water rates guaranteed. The state legislature that accorded the latent powers within the authorizing document that established MPWMD is a higher authority than LAFCO. A superior court judge, also a higher authority than LAFCO, has ruled against the second LAFCO hearing decision, requiring a set aside plus an order for LAFCO to pay MPWMD's attorney fees. CalAm intervened and interfered in that court case showing its corrupt bias plus it disobeyed the judge's instructions not to attempt to expand the scope of the hearing. The judge publicly admonished CalAm for this brazen disregard for his explicit instructions. LAFCO also revealed bias, I think, by supporting CalAm's intervenor request. That makes three LAFCO moments in the limelight. NO MORE CHANCES FOR LAFCO AND CALAM TO MAKE ANOTHER ATTEMPT TO BLOCK THE EMINENT DOMAIN BUYOUT.

It is obvious to me that CalAm is up to no-good again. When it does not get its unfair, corrupt desires met, it files another lawsuit. Why? Because all the costs add to their ability to apply to the CPUC for more rate increases, crying operational costs, etc. Yes, lawsuit costs are included in their calculations. Same for capital infrastructure, advertising, charitable sponsorships, acquisition costs, etc. This is all about their 'god' called money. For CalAm our public water is free, as the inherent commodity of its corporate enterprise belongs to the public domain, and in the case of CalAm's over-pumping its water rights, water theft has been taking place for decades, not only in the Monterey Peninsula but also in Marina where CalAm has no water rights to critically over-drafted aquifers.

I hope the board does not fall for this CalAm intimidation strategy. Fear has been one of their successful tools for decades. Remember the threats to implement water rationing? Please do not fall for it. As mentioned above, LAFCO got an order to set aside its denial plus attorney fees expenses. That court decision is also above LAFCO, as demonstrated by its court decision - LAFCO must obey that legal outcome, which nullifies LAFCO's denial. Nevertheless, LAFCO is, by its actions, "above the law", even thumbing its nose at the law. Therefore, it more than likely would disregard the court's rulings just as it has ignored the state legislature's granting latent powers to MPWMD. Ignorance or feigned ignorance does not

exonerate disregarding the law.

The court left the decision to revisit the latent powers issue up to the MPWMD board, thereby giving MPWMD the final decision authority. MPWMD has the ACE and winning hand, so, no more trips to LAFCO, please. Not worth the cost or the risk of more costs and wrinkles to deal with, or encouraging LAFCO, and CalAm, to think they have the upper hand. They do not deserve the respect of another visit. The court did not require another LAFCO application, so that in and of itself is significant.

Yes, that court case was not about the existence of latent powers, but the court decision implies positive acknowledgement, allowing the MPWMD board to decide - not LAFCO! Let the sleeping dog lie for that dog is ferocious when caught in a corner and will do all in its power to strike back. No telling what other tricks up-its-sleeve it may have as subterfuge.

If CalAm files another lawsuit re latent powers, rest assured, CalAm cannot win, just as it did not win in the Judge Wills court decision. MPWMD has all the proof and legal legs to stand on. Have confidence because CalAm, if it files, will again have the proverbial egg on its face, another court admonishment for bringing a frivolous lawsuit. MPWMD could easily file for a dismissal given the legal evidence and legislative proof it has a charter provision to activate latent powers, which are already activated. Has the state legislature objected? Why get permission when permission was granted decades ago? Is there not hypocrisy in LAFCO's granting jurisdictional boundaries expansion only to deny power to service those parcels? Unless it thought it was doing CalAm a favor. Isn't the CalAm trail of endless lawsuits indicative of unsuccessful projects on CalAm's part? Forked-tongue syndrome? Fortunately for ratepayers, Judge Wills required LAFCO to reimburse MPWMD's attorney fees.

MPWMD attorneys can scrutinize the MPWMD foundational charter for the correct section(s) that contains the latent powers authority. I do not have a copy so I am basing my inputs on knowledge and experience thus far acquired.

Since it was the state legislature that granted the foundational charter that included latent powers activation, that fact alone, again from my understanding, puts MPWMD in the driver's seat, not LAFCO. Because those latent powers existed and activated long before the MPWMD application to LAFCO, LAFCO does not even have the power to grant latent powers authority in this case. Why not? Because what has already been approved cannot be undone except by the same granting or higher authority. The state legislature has that authority, not LAFCO. It seems that LAFCO should have made that connection and concur with the state legislature and MPWMD's enactment of that authority legally given. LAFCO claims to be a "quasi-legislative" body. Notwithstanding, Monterey County Superior Court is a fully bona-fide legislative body, thus superior in authority to LAFCO, per my understanding. Unfortunately, LAFCO staff or attorneys had not, I presume, been aware of that foundational charter's provisions to activate latent powers. Not an excuse for a lack of due diligence or failure to consider all the evidence, which constitutes a dereliction of duty.

In sum, if CalAm files a lawsuit against MPWMD on latent powers activation objections, MPWMD stands on 'terra firma' and can point to LAFCO's lack of jurisdiction over a state issued foundational charter and its provisions to activate latent powers to distribute/service retail water within its jurisdictional boundaries. The same logic applies to a revisit of the issue at LAFCO, especially in light of the LAFCO approval of MPWMD's expanded boundaries jurisdiction.

Alvin, I apologize for being so blunt, long-winded and repeating myself, but having another eye on the ball out here in public land may help provide a different perspective on the dilemma for discussion purposes. I had to put my inputs into context to clarify my reasoning, thus some repeats. For me, it is a no-brainer - as the referee in baseball must call, three strikes you are out, LAFCO/CalAm should not get another chance to step up-to-bat on the water baseball plate. The fact that CalAm is threatening another lawsuit is just the same old fear tactic meant to throw a monkey wrench into the works.

To be clear, this is input based on my observations. The board has all the in-depth information to make its decision and talented attorneys for thorough analyses. Sometimes we have to also listen to our "gut" or our intuition. That is up to each board member. It is not my place or my intention to tell the board members what they should do or think. I am just a humble member of the public fighting to support MPWMD and our communities in the struggle against malignant forces. Entrenched evil is not so easy to dislodge. Persistence and patience are virtues helpful to sustaining momentum and endurance to make it to the finish line.

God bless you and all the board members in all your endeavors. Most importantly, I am praying for you all that you come to the right decision. I recommend prayer because God does answer our sincere prayers, so they do have power. In fact, that is the most powerful weapon we have in our arsenal to fight against evil in our midst. So far, our prayers are being answered despite the enemy's fierce force against us. Victory is just around the bend :) Why am I so confident in this outcome? Because the MPWMD team is doing an exceptionally outstanding job! Bravissimo!

Very respectfully,
margaret-anne coppernoll