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TO: David Berger, General Manager
FROM: David C. Laredo, General Counsel 
RE: Options to Enforce District Rules and Regulations

You have requested our opinion as to options available to the Monterey Peninsula Water Management District's ("District" or "MPWMD") to enforce its Rules and Regulations and other provisions of law, including ordinances. Circumstances may arise that require a more rapid and streamlined approach than is available under current enforcement standards. These circumstances may include but are not limited to District regulation activities involving the Carmel River (Carmel River Management (Regulation XII), and compliance with the Operational Water Supply Budgets (Regulation X – Rules 101 and 102) or variances therefrom (Regulation IX). At this time, such violations constitute misdemeanor offenses.

In particular, you ask whether a procedure can be enacted to make certain violations enforceable by administrative action by District staff to facilitate a speedier response than working with the District Attorney's office on criminal prosecutions. A similar process is available to municipal offices for ordinance violations.

Conclusion

Various enforcement options are available to MPWMD other than criminal misdemeanor prosecutions by the District Attorney or civil enforcement through court action. The most promising is the Administration Citation and Administrative Order enforcement process allowed by Government Code Section 53069.4 which enables administrative enforcement so long as a de novo court review of the enforcement decision is available to challenge the action taken.

Analysis

MPWMD enforcement powers are not as extensive as those held by municipalities or counties. The District, however, does hold a limited police power. It can bring civil actions under certain circumstances to abate nuisances or seek injunctive relief. The District is empowered, however, to adopt an Administration Citation and Administrative Order enforcement process pursuant to California Government Code Section 53069.4. This procedure enables the District to impose administrative enforcement so long as the procedure used provides for de novo review of the enforcement decision in court if a person wishes to challenge the action taken.

Current MPWMD Powers and Enforcement Mechanisms

MPWMD's enabling legislation¹ begins with a finding that in order to serve the people of the Monterey Peninsula efficiently, enactment of this special law is necessary "*for the public welfare and for the protection of the environmental quality and the health and property of the residents therein.*" This constitutes a police power to protect public health and safety but it is more limited than municipal governments.

Section 118-301 of the District Law states that the District may exercise the powers "which are expressly granted by this law, *together with such powers as are reasonably implied from such express powers and necessary and proper to carry out the objects and purposes of the district.*"

Section 118-308 provides the District with the power, by resolution or ordinance, to adopt regulations for the exercise of its powers and the carrying out of its purposes.

Under Section 118-325, General Powers, the District has the power to do "any and every lawful act necessary in order that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within the district." This is the broadest power held by MPWMD and is not limited to "water waste" or "conservation" measures although they would be included within the power.

The District's enabling legislation provides several enforcement mechanisms. Section 118-256 provides that the Board may, by ordinance, adopt reasonable rules and regulations to carry out its powers and duties. Currently, a violation of a District ordinance is a misdemeanor subject to the provisions of the Penal Code, Section 17(d). This is a criminal prosecution and requires the participation of the Sheriff and District Attorney.

As previously noted, the District has the power "by resolution or ordinance to adopt regulations respecting the exercise of its powers and the carrying out of its purposes" pursuant to Section 118-308. California Government Code Section 53069.4 provides that the District may adopt administrative procedures to enforce its ordinances, and to impose administrative fines and penalties. Government Code Section 53069.4 states, in full,

(a) (1) The legislative body of a local agency, as the term "local agency" is defined in Section 54951², may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the

¹ Statutes of 1977, Chapter 527, as amended (found at West's California Water Code Appendix, Chapters 118-1 to 118-901). This statute is also referenced as "the District Law" in this memo.

² California Government Code Section 54951 provides, "As used in this chapter, 'local agency' means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency."

imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900.

(2) The administrative procedures set forth by ordinance adopted by the local agency pursuant to paragraph (1) shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

b) (1) Notwithstanding the provisions of Section 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence. A proceeding under this subdivision is a limited civil case. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.

2) The fee for filing the notice of appeal shall be twenty-five dollars (\$25).³ The court shall request that the local agency's file on the case be forwarded to the court, to be received within 15 days of the request. The court shall retain the twenty-five dollar (\$25) fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the local agency in accordance with the judgment of the court.

3) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

c) If no notice of appeal of the local agency's final administrative order or decision is filed within the period set forth in this section, the order or decision shall be

³ AB 1248 is currently pending which may modify the cost of the filing fee

deemed confirmed.

d) If the fine or penalty has not been deposited and the decision of the court is against the contestant, the local agency may proceed to collect the penalty pursuant to the procedures set forth in its ordinance.

Under Section 118-258 of the District Law, the Board is authorized to delegate the exercise of any and all executive, administrative, and ministerial powers to any of its appointed or contracted for officers (e.g., general manager, attorney).

Section 118-328 empowers the District to maintain legal actions "involving or affecting the...use of waters..., within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein." District Law Section 118-332 enables the District to restrict water use during drought or other emergency, and to prohibit water waste and nonessential water use.

Police Power

The police power is coextensive with necessities of the situation and as broad as public welfare. The police power is used to prevent, suppress and abate public nuisances. Another way to state the power is to prevent businesses, industries, trades and occupations from injuring or menacing the public health, safety, morals, order, welfare and convenience.

The California Constitution provides municipalities with the power to enforce regulations necessary for "health, peace, comfort, and happiness of the inhabitants." (Const. art. 11, § 7.) In determining whether a particular ordinance represents a valid exercise of the police power, courts simply determine whether the ordinance reasonably relates to a legitimate governmental purpose. A city ordinance enacted pursuant to the police power can be nullified if it is palpably unreasonable, arbitrary or capricious.

California water districts have constitutional authority pursuant to Article X, section 2, to protect water resources from waste and unreasonable use for the public benefit. This "police power" is not as extensive as municipal police power. Water districts can enjoin certain activities and recover damages to protect water resources for the benefit of public health, safety and welfare.

In *Niles Sand & Gravel Co. v. Alameda County Water District* (1974) 37 Cal. App.3d 924, 112 Cal. Rptr. 846, the court described the enactment of what originally was Article XIV, section 3 of the California Constitution which was followed by the state Supreme Court decision in *Gin S. Chow v. City of Santa Barbara* (1933) 217 Cal. 673, 701, 22 P.2d 5. In *Gin Chow*, the California Supreme Court held that regulation of the use and enjoyment of a property right for the public benefit falls within the sphere of the police power. Thus, the police power recognized by the Constitution applies to all water rights enjoyed or asserted in this state. Furthermore, the state legislature has implemented this constitutional mandate by enacting statutes which stress the equation of the state's water resources with the public health, safety and welfare.

Special District Powers

The California Supreme Court as long ago as 1891 recognized that a special district of the state does not necessarily need to be vested with all governmental powers.⁴ The state legislature may grant such powers as it deems necessary to discharge its public purpose. MPWMD is a special district.

Special Monterey County Enforcement Provision

Water Code §31029.1 (a) provides, "An ordinance to require water conservation and to prevent waste which is adopted by a district which includes territory in Monterey County may provide that violation is an infraction or nuisance. A violation may be prosecuted in the name of the people of the State of California, or redressed by civil action." Subsection (b) of this section provides, "Every violation determined to be an infraction shall be punishable pursuant to subdivision (b) of Section 36900 of the Government Code."⁵

The authority to maintain a legal action must appear in the act under which the district was organized or under that act as supplemented by other statutes bearing on the subject. The combination of MPWMD's legislative powers with Water Code §31029.1 can provide another avenue to expand enforcement options, but it must relate to water conservation and water waste prevention.

Conclusion

Various enforcement options are available to MPWMD to avoid criminal misdemeanor prosecutions by the District Attorney. The most promising is the Administration Citation and Administrative Order enforcement process allowed by Government Code Section 53069.4 which enables administrative enforcement so long as a de novo court review of the enforcement decision is available to challenge the action taken.

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⁴ In re Madera Irrigation District (1891) 28 P. 272.

⁵ Government Code §36900 (b) states, "Every violation determined to be an infraction is punishable by (1) a fine not exceeding one hundred dollars (\$100) for a first violation; (2) a fine not exceeding two hundred dollars (\$200) for a second violation of the same ordinance within one year; (3) a fine not exceeding five hundred dollars (\$500) for each additional violation of the same ordinance within one year." Subsection (c) provides, "For any violation declared to be a nuisance, the ordinance may provide for the summary abatement of the nuisance, and may provide for the initiation of civil proceedings to abate the nuisance. The ordinance may provide that any person committing a nuisance shall be liable for the costs incurred by the district to abate the nuisance including, but not limited to, the costs of investigation, costs of time and materials expended to eliminate or mitigate the nuisance, court costs, attorneys' fees, and costs of monitoring compliance. The ordinance may further establish civil penalties that may be assessed by a court against persons found by the court to have committed a nuisance."