



**ITEM 16. CONSIDER APPEAL OF GENERAL
MANAGER DETERMINATION OF COMPLETE
APPLICATION FOR FLORES WELL #1 AND
PISENTI WELL #2 (APN 103-071-002 and -019)**

Meeting Date: November 21, 2011

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Summary of Beech Appeal

- Complex item with overlapping events, changing conditions, and unusual circumstances.
- Board action initiated by referral from Director Markey.
- Primary issue: Should General Manager's July 20, 2011 determination that Flores and Pisenti applications are "complete" be upheld?
- Secondary issue: Should "intermediate" decisions by General Manager be subject to appeal?

Complete Determination Based on Four Questions

- Q1: Did testing of Wells #1 and #2 impact the Beech WDS in October 2010?
- Q2: Were MPWMD well testing procedures properly followed in 2010 to assess reliability and impact to other wells?
- Q3: If a procedure was not properly followed in 2010, was it corrected in 2011 (as feasible)?
- Q4: Based on Q1, 2 and 3, are the “complete” determinations for Well #1 and Well #2 valid?

Intermediate Decisions

- Previous “intermediate” decisions are moot and/or have been overtaken by more recent events and information.
- Improvements to District protocol are the best solution to “ambiguity” identified in Director Markey’s referral, and reduce the need for “intermediate” decisions.
- Rules and Regulations Review Committee began addressing these issues, which are not part of this hearing.



Summary of Wells

- Flores Well #1; proposed for domestic supply to one parcel.
- Pisenti Well #2; proposed for domestic supply to one parcel.
- Beech Well; part of unpermitted WDS that irrigates three parcels (discovered June 2011).
- Anastasia Well; undisclosed, unpermitted well part of Beech-Anastasia WDS (discovered late October 2011).

Previous MPWMD Action

- August 2011: Director Markey referred “subordinate decisions” by General Manager to the Board; addressed at 9/19/11 Board meeting. [Exh. 16-A]
- Key issues: (1) June 24 letter providing direction on well testing; (2) July 20 “complete” letters for Flores and Pisenti applications ; and (3) July 26 letter rejecting Beech appeal of July 11, 2011 as not valid. [Exh. 16-B, C]
- Board set the matter for a future hearing as an appeal.
- Parties indicated intent to conduct a monitored well test in October 2011 to resolve primary issue about impact.

Background

- See detailed timeline. [Exh. 16-H]
- Beech believes his well was adversely affected by October 2010 testing of Flores and Pisenti wells.
- Beech did not receive notice of an opportunity to have his well monitored in 2010; a new opportunity to monitor in 2011 was directed by MPWMD when this error became known.
- Applicants believe Beech well was over-pumped due to extensive irrigation of three parcels, and assert that MPWMD and County procedures have been followed. [Exh. 16-K]

Background, continued

- Original MPWMD direction in June-July 2011 was intended to help direct parties toward resolution, without success.
- After Board action in September 2011, parties worked toward a combined well test in October 2011. Test did not occur due to disagreement over conditions under which Beech would allow access to his well for monitoring.
- Anastasia well is discovered as part of a separate, but related, enforcement action. Its potential interplay with Beech well and interlinked tanks is relevant.



Q1: Impact Evaluation

- No scientific evidence supports Beech's contention that well testing caused harm to his well or tanks.
- Monitoring of Well #1 and #2 water levels during Beech well irrigation cycles showed no direct connectivity. [Exh. 16-E]
- Previously undisclosed 2-well, 4-tank, 3-parcel, 2-owner WDS could likely have played a substantive role in October 2010.
- Beech/Anastasia wells are not metered and no modern tests were conducted. Water use vs. well capacity in October 2010 was unknown.
- Permission was not granted by Beech to monitor his well in 2011 to assess impact.

Q2: Procedure Compliance

- District procedures were properly followed in 2010 for well reliability as interpreted by the District staff and consultants who wrote them, consistent with State Law. [Exh. 16-F, G]
- Alternative interpretations misread/misunderstood the text. District staff attempted to clarify in response letter, e-mails and phone calls. [Exh. 16-J]
- Monterey County Health Department determined Well #1 and #2 reliability is adequate. [Exh. 16-I]
- Procedures were not followed correctly in 2010 re: notice of opportunity to monitor neighboring wells. Procedures were followed correctly re: calculations used if no well monitoring data are available, or permission not given. [Exh. 16-C]

Q3: Corrective Action

- Applicants followed July 2011 District direction to correct monitoring notice deficiency in 2010, and were not responsible for timeline set. [Exh. 16-C]
- Applicants worked to arrange October 2011 combined well test at 3 gpm, as requested by Beech. Test was cancelled when Beech withdrew permission to monitor his well because applicants refused to sign an agreement compelling them to retest both wells again individually.
- Beech has not provided adequate rationale as to why retest of Well #1 and #2 individually is related to impact to his well; home construction impacts concern is not a hydrologic issue.

Q4: Complete Application

- The weight of evidence supports the determination that Well #1 and Well #2 applications are complete, and that testing in 2010 did not harm the Beech WDS.
- Applicants negotiated in good faith with Beech to conduct a new test in October 2011, as requested. District does not have authority to compel them to sign an agreement they believe violates their right of due process.
- Representatives for applicants and appellant are present.
- Technical staff are present to answer questions.

Gen. Mgr. Recommendations

- MPWMD Board should reconfirm the two “complete” letters and instruct staff to proceed processing the WDS permits for Flores Well #1 and Pisenti Well #2. The permits may again be appealed by outside parties pursuant to Rule 70.
- The MPWMD Rules & Regulations Committee should address potential changes to District procedures, which should reduce the need for “intermediate” decisions by the General Manager.
- The Board should not apply retroactive changes to District procedures in this case (due process issues).

For More Information

Staff reports, ordinances and presentation materials can be found on the District's website at:

www.mpwmd.net

PowerPoint presentations will be posted on the website the day after the meeting