

This meeting has been noticed according to the Brown Act rules. This agenda was posted on Thursday, February 12, 2015.



**Ordinance No. 152
Oversight Panel**

Members:

*John Bottomley
Paul Bruno
Jason Campbell
Jody Hanson
Todd Kruper
George Riley
Christine Monteith
John Tilley
Norman Yassany*

MPWMD Contacts:

*General Manager,
David J. Stoldt

Administrative Services
Manager, Suresh Prasad

Executive Assistant,
Arlene Tavani*

AGENDA
**Ordinance No. 152 Oversight Panel
Of the Monterey Peninsula Water Management District**

Thursday, February 19, 2015, 9:00 am
District Conference Room, 5 Harris Court, Building G, Monterey, CA

Call to Order

Comments from Public -- *The public may comment on any item within the District's jurisdiction. Please limit your comments to three minutes in length.*

Action Items -- *Public comment will be received on Action Items. Please limit your comments to three minutes in length.*

1. Consider Adoption of Minutes of August 19, 2014 Committee Meeting

Discussion Items -- *Public comment will be received on Discussion Items. Please limit your comments to three minutes in length.*

2. Review of Actual December Receipts
3. Update on Ongoing Water Supply Charge Spending - Capital Improvement Budget
4. Update on Ongoing Water Supply Charge Spending Plans for Groundwater Replenishment
5. Overview of Appellate Court Decision Regarding MPWMD Authority

Adjourn

Staff reports regarding these agenda items will be available for public review on Thursday, February 12, 2015 at the District office and website. After staff reports have been distributed, if additional documents are produced by the District and provided to the Committee regarding any item on the agenda, they will be made available at 5 Harris Court, Building G, Monterey, CA during normal business hours. In addition, such documents will be posted on the District website at www.mpwmd.net. Documents distributed at the meeting will be made available in the same matter. Upon request, MPWMD will make a reasonable effort to provide written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings. Please send a description of the requested materials and preferred alternative format or auxiliary aid or service by 5 PM on Friday, February 13, 2015. Requests should be sent to the

Board Secretary, MPWMD, P.O. Box 85, Monterey, CA, 93942. You may also fax your request to the Administrative Services Division at 831-644-9560, or call 831-658-5600.

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ORDINANCE NO. 152 OVERSIGHT PANEL**ITEM: ACTION ITEM****1. CONSIDER ADOPTION OF AUGUST 19, 2014 COMMITTEE MEETING MINUTES****Meeting Date: February 19, 2015****From: David J. Stoldt,
General Manager****Prepared By: Arlene Tavani**

SUMMARY: Attached as **Exhibit 1-A** are draft minutes of the August 19, 2014 Committee meeting.**RECOMMENDATION:** The Committee should review the minutes and adopt them by motion.**EXHIBITS****1-A** Draft Minutes of the August 19, 2014 Committee Meeting

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EXHIBIT 1-A

DRAFT MINUTES

Ordinance No. 152 Oversight Panel of the Monterey Peninsula Water Management District *August 19, 2014*

Call to Order The meeting was called to order at 1:07 pm in the conference room at the offices of the Monterey Peninsula Water Management District.

Committee members present:

Paul Bruno
Jason Campbell
Jody Hanson
Rick Smith (alternate for Christine Monteith)
John Tilley

MPWMD Staff members present:

David J. Stoldt, General Manager
Suresh Prasad, Administrative Services Manager/Chief Financial Officer
Arlene Tavani, Executive Assistant

Committee members absent:

John Bottomley
Todd Kruper
Christine Monteith (represented by an alternate)
George Riley
Norm Yassany

Comments from the Public:

No comments were directed to the committee.

Action Items

- 1. Adopt Minutes of May 4, 2014 Committee Meeting**
On a motion by Bruno and second of Smith, the May 4, 2014 committee meeting minutes were approved unanimously on a vote of 5 – 0.

Discussion Items

- 2. Review of Revenue and Expenditures of Water Supply Charge Related to Water Supply Activities**

Stoldt and Prasad reviewed the Water Supply Charge Availability Analysis and the Labor Allocation by Operating Funds for Fiscal Year 2014-2015 that were included in the staff report on this item. Stoldt and Prasad responded to questions from the committee. Their comments are summarized below.

(A) The City of Pacific Grove has requested \$100,000 from the Local Water Projects grant fund to develop a project that will treat storm water and wastewater to produce between 120 and 500 acre-feet per year of tertiary treated water for the Pacific Grove golf course and cemetery. The preliminary cost estimates are up to \$8,000 per acre-foot. One of the project's advantages is that it will help the city comply with new standards for storm water discharges to the ocean. (B) The Water Management District has budgeted \$1,405,000 for the Pure Water Monterey project. By mid-September there should be consensus among the project participants as to whether or not progress will be made on source water agreements and funding. If the project does not move forward, the \$1.4 million could be spent in other ways, such as paying down deficits that have accrued in other water supply projects, or to fund investigations into expansion of Aquifer Storage and Recovery and the future use of Los Padres Dam. (C) If the California Supreme Court rules that the Water Management District can resume collection of the user fee, the water supply charge might be reduced or sunset. However, collection of the water supply charge is a steady funding source that would be an advantage when assembling a financing plan for a water project. (D) The Water Management District's 2013-14 Fiscal Year Audit will not include a separate breakdown of water supply charge expenditures. (E) The categories of Indirect Labor and Indirect Supplies and Services listed in the FY 2014-2015 Budget are 12% of the total water supply charge, which is below the 15% limit that the Water Management District agreed to. (F) The category of Election Expense is allocated to the November 2015 election for directors in Divisions 2, 3, 4 and 5. This represents approximately 33% of the total anticipated cost for the election. Staff may reconsider how this cost is allocated.

3. Update on Monterey Peninsula Taxpayers Association (MPTA) v MPWMD Lawsuit re Ordinance No. 152

Stoldt reported that the MPTA has amended the original lawsuit to claim that: (1) the District had a ministerial duty to call an election on the referendum against Ordinance No. 152; and (2) the ordinance violates the Water Management District's enabling legislation and the California Constitution because it was adopted without a vote of the electorate, and the water supply charge funds projects or works that, they believe, must be approved by the voters. A hearing is set on December 15, 2014.

4. Update on Local Water Project Funding Program

Stoldt distributed Local Project Grant Application documents for review. He noted that if the grant recipients obtain permanent financing that would allow reimbursement of development costs, they must pay back the grant funds received. He expects to receive completed applications from the cities of Seaside and Pacific Grove. The Pebble Beach Company is considering various options such as drilling a well to serve the Del Monterey Golf Course, use of water from Monterey Peninsula Airport District wells, or repurposing a brackish water well at the Monterey Peninsula Country Club Site. The Monterey County Fairgrounds will need funds to complete preliminary design work on re-plumbing fairground toilets to use non-potable well water from wells on their

property. However, that well water is already applied to the Monterey Pines Golf Course. Wells at the Airport District might be utilized on the Monterey Pines Golf Course, if Fairgrounds well water was no longer available. Stoldt noted that there was consensus among the committee members that should the requests for grant funds exceed the \$200,000 budgeted, the Board could consider increasing the amount of grant funds available.

Adjournment

The meeting was adjourned at 2 pm.

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ITEM: DISCUSSION ITEM**2. REVIEW OF ACTUAL DECEMBER RECEIPTS**

Meeting Date: February 19, 2015 **Budgeted:** N/A

From: David J. Stoldt **Program/**
 General Manager **Line Item No.:** N/A

Prepared By: Suresh Prasad **Cost Estimate:**

General Counsel Approval: N/A
Committee Recommendation: N/A
CEQA Compliance: N/A

Please see **Exhibit 2-A** for discussion at the meeting.

Exhibit

2-A Water Supply Charge Receipts

EXHIBIT 2-A**Monterey Peninsula Water Management District****Water Supply Charge Receipts**

	FY 2012-2013 Revised Budget	FY 2012-2013 Audited Actuals	FY 2013-2014 Revised Budget	FY 2013-2014 Audited Actuals	FY 2014-2015 Adopted Budget	FY 2014-2015 Actual YTD Collected
Water Supply Charge	\$3,300,000	\$3,400,873	\$3,400,000	\$3,412,207	\$3,400,000	\$2,024,551
Percentage collected over budget		103.1%		100.4%		59.5%

EXHIBIT 3-A

Monterey Peninsula Water Management District

Water Supply Charge Availability Analysis

	FY 2012-2013 Revised Budget	FY 2012-2013 Audited Actuals	FY 2013-2014 Revised Budget	FY 2013-2014 Audited Actuals	FY 2014-2015 Adopted Budget	FY 2014-2015 Projected	FY 2015-2016 Prelim. Budget
Beginning Fund Balance		\$247,433		\$6,060,318	\$3,892,112	\$3,892,112	
Water Supply Charge	\$3,300,000	\$3,400,873	\$3,400,000	\$3,412,207	\$3,400,000	\$3,400,000	\$3,400,000
Carry-Forward Prior Year Water Supply Charge	0	0	1,413,218	0	0	0	(1,138,000)
Loan Proceeds for ASR	0	0	1,496,101		0	0	0
Capacity Fee	175,000	115,972	175,000	223,625	175,000	175,000	175,000
Project Reimbursement	3,736,300	2,001,556	2,326,762	2,017,385	472,900	472,900	-
Watermaster-Reimbursement	91,000	69,710	94,000	75,628	69,000	69,000	70,000
Property Taxes	115,800	162,318	317,848	333,267	573,450	573,450	300,000
Interest	1,000	4,068	3,000	12,799	4,500	4,500	5,000
Other	4,300	8,025	-	16,010	-	-	-
Capital Equipment Reserve Fund	-	-	-	-	41,800	41,800	-
Total Revenues	\$7,423,400	\$5,762,522	\$9,225,929	\$6,090,921	\$4,736,650	\$4,736,650	\$2,812,000
Direct Personnel	738,361	784,190	764,549	883,237	908,936	908,936	931,659
Legal	130,000	302,954	230,000	285,853	230,000	230,000	230,000
Project Expenditures <i>[see below]</i>	2,219,050	785,943	5,734,179	4,540,839	3,540,100	3,793,800	1,610,000
Project Expenditures-Reimbursements <i>[see below]</i>	3,756,300	1,508,253	2,235,762	1,925,068	472,900	557,900	-
Fixed Asset Purchases	20,500	15,944	34,300	35,919	78,150	78,150	50,000
Contingencies	10,250	-	10,250	-	10,250	10,250	10,250
Debt Service	145,600	80,169	230,000	219,136	230,000	230,000	230,000
Election Expense	-	-	52,500	-	-	-	100,000
Indirect Labor*	242,339	281,816	205,051	206,230	200,314	200,314	205,322
Indirect Supplies & Services*	161,000	190,368	167,399	162,845	204,000	204,000	209,100
Total Expenditures	\$7,423,400	\$3,949,637	\$9,663,990	\$8,259,127	\$5,874,650	\$6,213,350	\$3,576,331
Net Revenue Over Expenses**	\$0	\$1,812,885	(\$438,061)	(\$2,168,206)	(\$1,138,000)	(\$1,476,700)	(\$764,331)
Ending Fund Balance		\$6,060,318		\$3,892,112	\$2,754,112	\$2,415,412	
Project Expenditures	FY 2012-2013 Revised Budget	FY 2012-2013 Audited Actuals	FY 2013-2014 Revised Budget	FY 2013-2014 Audited Actuals	FY 2014-2015 Adopted Budget	FY 2014-2015 Projected	FY 2015-2016 Prelim. Budget
Groundwater Replenishment Project	\$736,600	\$475,751	\$3,656,351	\$3,383,991	\$1,405,000	\$2,494,000	\$250,000
ASR Phase I	\$898,700	\$169,817	\$1,168,478	\$428,049	\$894,200	\$522,300	\$0
Reimbursement Projects	\$3,756,300	\$1,508,253	\$2,235,762	\$1,925,068	\$472,900	\$557,900	\$0
Cal-Am Desalination Application	\$0	\$96,037	\$50,000	\$59,443	\$108,400	\$75,000	\$160,000
Peninsula Water Supply Projects Operations Studies	\$150,000	\$0	\$0	\$0	\$0	\$0	\$0
ASR Expansion	\$150,000	\$0	\$45,000	\$5,420	\$105,000	\$50,000	\$750,000
Other Water Supply Projects - IFIM/GSFlow	\$250,000	\$2,898	\$275,000	\$209,432	\$225,000	\$75,000	\$150,000
Local Water Projects	\$0	\$0	\$150,000	\$100,000	\$200,000	\$150,000	\$200,000
Alternate Desal Project	\$0	\$0	\$300,000	\$287,633	\$400,000	\$225,000	\$100,000
Other Project Expenditures	\$33,750	\$41,440	\$89,350	\$66,871	\$202,500	\$202,500	\$0
Total Commitments	\$5,975,350	\$2,294,196	\$7,969,941	\$6,465,907	\$4,013,000	\$4,351,700	\$1,610,000
*: Indirect costs as percent of Water Supply Charge	12.2%	13.9%	11.0%	10.8%	11.9%	11.9%	12.2%

Recent Activities:

	Date	Amount
Deep Water Desal cost sharing agreement approved	08/19/2013	\$ 800,000
Cal-Am Desal Project Public Funds Financial Consultant (Total cost \$250,000; Phase I cost \$90,000)	09/16/2013	90,000
GWR bond counsel services	09/16/2013	90,000
GWR accounting services for debt equivalence	09/16/2013	10,000
GWR Consultant to assess externalities	09/16/2013	80,000
GWR evaluation of reclamation ditch (Schaaf & Wheeler)	10/21/2013	40,000

** Deficit balances are paid from combination of loan, interfund borrowing, line of credit proceeds, or fund balance

EXHIBIT 3-B
 Monterey Peninsula Water Management District
 Labor Allocation by Operating Funds
 Fiscal Year 2014-2015

	<u>Mitigation</u>	<u>Water Supply</u>	<u>Conservation</u>	<u>Total</u>
<u>General Manager's Office</u>				
General Manager	20%	60%	20%	100%
Executive Assistant*	25%	50%	25%	100%
<u>Administrative Services</u>				
ASD Mgr/CFO*	33%	34%	33%	100%
Accountant*	33%	34%	33%	100%
Human Resources Analyst*	33%	34%	33%	100%
Office Services Supervisor*	33%	34%	33%	100%
Office Specialist II*	33%	34%	33%	100%
Information Technology Manager*	30%	37%	33%	100%
GIS Specialist*	51%	39%	10%	100%
<u>Planning & Engineering</u>				
P&E Mgr/District Engineer	58%	42%	0%	100%
Project Manager	75%	25%	0%	100%
Riparian Projects Coordinator	80%	20%	0%	100%
River Maintenance Specialist	100%	0%	0%	100%
River Maintenance Worker	100%	0%	0%	100%
<u>Water Demand</u>				
Water Demand Manager	0%	20%	80%	100%
Conservation Rep II	0%	75%	25%	100%
Conservation Rep II	0%	25%	75%	100%
Conservation Rep I	0%	0%	100%	100%
Conservation Rep I	0%	0%	100%	100%
<u>Water Resources</u>				
Water Resources Manager	29%	71%	0%	100%
Senior Hydrogeologist	0%	100%	0%	100%
Hydrography Programs Coordinator	90%	10%	0%	100%
Associate Hydrologist	2%	98%	0%	100%
Senior Fisheries Biologist	95%	5%	0%	100%
Associate Fisheries Biologist	100%	0%	0%	100%
Associate Fisheries Biologist	100%	0%	0%	100%
Average Percentage	43%	33%	24%	100%

* Portions or entire allocation of labor costs captured under indirect labor costs

<u>Settlement Agreement Criterion</u>		Costs		Budgets	
		FY14/15 Expenditures	July through January	February through June	FY14/15
0. Not mentioned, but necessary	CPUC Hearings-Legal Perkins Coie	26,514	48,000	(13,000)	35,000
1. CEQA	ADEIR-DDA	304,173	400,000	68,763	468,763
	Alternate Water Sources-DDA	34,913	35,000	(87)	34,913
	Noise-DDA	0	0	34,788	34,788
	Fisheries-DDA	0	0	34,964	34,964
	BioSurveys-DDA	0	0	34,500	34,500
	Finish DEIR & Start FEIR-DDA	0	0	338,920	338,920
	Program management for CEQA-Young (Hazen and Sawyer)	31,000	31,000	43,368	74,368
	Groundwater-Todd	22,645	49,000	8,622	57,622
	Groundwater Modeling-Hydrometrics	21,881	47,000	204	47,204
	Source Control-Nellor	19,285	13,000	12,000	25,000
	Regulatory-Sheikh, Crook & Nellor	22,450	10,000	12,450	22,450
	Pipelines & Power-Cole	6,450	15,000	(5,000)	10,000
	FORA	0	4,000	(4,000)	0
	Energy & Construction-E2	20,997	35,000	0	35,000
	New Project Description-Schaaf & Wheeler	6,660	23,000	(15,200)	7,800
	Water Quality and Treatment-Trussell	34,948	30,000	4,948	34,948
	DEIR/FEIR-Trussell	0	0	34,937	34,937
	CEQA Legal-Perkins Coie	72,038	135,000	0	135,000
2. Permits	NPDES & Others FlowScience, Trussell, Crook/Sheikh/Nellor	6,564	0	71,500	71,500
3. Source Water Agreements	MPWMD Water Rights-S&W	43,955	25,000	18,955	43,955
	Lab-Eaton	7,710	37,000	(29,290)	7,710
	Lab-MBAS	0	24,000	(24,000)	0
	Definitive Agreement-Wellington, Lennihan, et.al.	13,467	65,000	0	65,000
4. DDW/IAP	Shut Down Pilot-Harn, Utlura, SPI, Trussell	40,531	69,000	(28,469)	40,531
	Engineering Report-Nellor/Todd/Trussell (to '16)	0	150,000	(150,000)	0
	Geochemical Model-Todd	119,902	82,000	37,902	119,902
	Water Quality, Outfall, Feasibility-Trussell	0	25,000	7,433	32,433
	Water Recycling Criteria-Crook	0	0	10,000	10,000
	IAP	0	0	23,000	23,000
5. Schedule/Choose Design Build Firm	D/B--Pros/Cons Various D/B Formats, Schedule	0	0	75,000	75,000
	Legal Authority for D/B	0	0	10,000	10,000

Settlement Agreement Criterion		Costs		Budgets	
		FY14/15 Expenditures	July through January	February through June	FY14/15
6. 10% Design	Brine Receiving Str-E2 Move to UR 504	0	0	(141,930)	(141,930)
	Injection Wells-Todd (to'16)	29,901	70,000	(40,099)	29,901
	Pipelines to wells, power and perc.-E2	32,147	32,000	147	32,147
	Salinas Pump Station-E2 Move to CP255	33,580	7,000	(7,000)	0
	Reclamation Ditch/Tembladero Slough-E2	21,745	29,000	0	29,000
	Blanco Drain-E2	36,711	40,000	5,000	45,000
	In Plant Piping-E2	0	5,000	(5,000)	0
	Product Water Stabilization-Trussell	34,881	15,000	19,881	34,881
	AWTF-SPI	74,216	60,000	25,000	85,000
	AWTF-Trussell	34,865	23,000	17,000	40,000
	Value Engineering-Trussell	0	26,000	8,994	34,994
7. Funding Plan	MPWMD	0	9,000	(9,000)	0
	Lobbyist or other	0	0	8,000	8,000
8. Water Purchase Agreement	MPWMD	0	20,000	0	20,000
9. Externality Study	MPWMD--HDR	0	200,000	0	200,000
Feasibility Study/Facilities Plan	Brezack	23,590	66,000	0	66,000
	SRF Application-Brezack	680	9,000	(8,320)	680
	Water Sampling SGWB-Todd (to '16)	0	58,000	(58,000)	0
	No. CA Coalition--Convert to Month to Month	7,557	8,000	14,557	22,557
Public Outreach	MPWMD-Thomas Brand & Data Instincts	22,451	90,000	150,000	240,000
Internal Labor for all activities	Staff	160,936	220,000	68,562	288,562
Total Budget		1,369,342	2,339,000	661,000	3,000,000
			Total	3,000,000	

Add back Pilot Plant

395,000
2,734,000 3,395,000

Groundwater Replenishment Project (UR-502)	Budget Through Jan. '15	Expenses to Date	FY14/15
Technical Consultants	1,134,000	570,985	1,565,261
Legal	293,000	112,018	245,000
Environmental	692,000	525,402	1,296,177
Internal Labor	220,000	160,936	288,562
Pilot Plant	395,000	0	395,000
TOTALS	2,734,000	1,369,342	3,395,000
Revenue--SRF	(74,883)	0	(74,883)
Net Budget	2,659,117	Remainder	3,320,116.9
		MPWMD	2,490,088
		MRWPCA	830,029

1,085,088 more

Monterey Peninsula Water Management District
GWR Project Costs
(updated through December 2014)

Period	Vendor	MPWMD Share	MRWPCA Share	Total Project Costs
MRWPCA				
prior to 4/12	MRWPCA	\$ -	\$ 1,948,238.00	\$ 1,948,238.00
04/2012 - 06/2012	MRWPCA	136,343.92	136,343.93	272,687.85
07/2012 - 05/2013	MRWPCA	224,972.84	224,972.85	449,945.69
07/2012 - 06/2013	MRWPCA	114,434.48	114,434.49	228,868.97
07/2013 - 12/2013	MRWPCA	1,327,047.34	442,349.11	1,769,396.45
01/2014 - 02/2014	MRWPCA	319,950.70	106,650.24	426,600.94
03/2014 - 04/2014	MRWPCA	591,883.73	198,719.99	790,603.72
05/2014 - 06/2014	MRWPCA	1,040,350.88	346,783.63	1,387,134.51
06/2014 - 06/2014	MRWPCA	37,777.50	12,592.50	50,370.00
07/2014 - 12/2014	MRWPCA	934,695.06	311,565.02	1,246,260.08
Sub-total		4,727,456.45	3,842,649.76	8,570,106.21
Thomas Brand				
07/2013 - 06/2014	Thomas Brand	17,269.52	5,756.50	23,026.02
07/2014 - 12/2014	Thomas Brand	26,487.19	8,829.06	35,316.25
Sub-total		43,756.71	14,585.56	58,342.27
Schaaf & Wheeler				
07/2013 - 06/2014	Schaaf & Wheeler	32,966.25	10,988.75	43,955.00
07/2014 - 12/2014	Schaaf & Wheeler	22,369.50	7,456.50	29,826.00
Sub-total		55,335.75	18,445.25	73,781.00
Miscellaneous				
07/2014 - 12/2014	Miscellaneous	2,122.69	707.56	2,830.25
Sub-total		2,122.69	707.56	2,830.25
Total project costs		\$ 4,828,671.60	\$ 3,876,388.14	\$ 8,705,059.73

- 3) The District's "practice of entering private homes to count and inventory household water fixtures . . . violates the fundamental right to privacy under Article I, section 1 of the California Constitution."
- 4) The District's warrantless inspection of their house was unreasonable because the inspection was overbroad and the Thums' consent was obtained under threat and, therefore, the inspection constituted an unconstitutional government search.
- 5) The District's rules using "household water fixtures as a proxy for estimating household water use, but only for those households that have sought a permit" are arbitrary, irrational and capricious. It stated that "it is not clear to the average citizen" what fixtures are counted. It further alleged that the District's "selection of water fixtures as a proxy for estimating water use" and fixture counting methodology violate "the substantive due process rights afforded under Article I, Section 7 of the California Constitution and the Fifth and Fourteenth Amendments to the United States Constitution."
- 6) It alleged that the District's connection charge, calculated under rule 24, was "unlawful because it is a general tax, or, in the alternative, it is a special tax and was not submitted to the voters for their approval."
- 7) The "connection charge is unlawful because it exceeds the proportional cost of service attributed to parcels, . . . it is imposed for potential or future services, and is imposed for general government services in violation of [California Constitution,] Article 13D, Section 6(b), or, in the alternative, it is a new or increased property related fee or charge within the meaning of California Constitution Article 13D, Section 6(c) requiring voter approval, which has not been obtained."

Trial Court Judgment and Findings

The trial court entered a judgment in favor of the District. Its judgment included the following findings.

- A) The Thums' bathroom addition did not implicate a fundamental vested right and the more deferential standard of review under Code of Civil Procedure section 1094.5 applies.
- B) The District's connection charge was validated by a 1986 validation judgment and is proper.
- C) The Thums are "barred from challenging the District's water use restrictions pursuant to Water Permit No. 30234 (Permit) because [they] accepted the benefits of the Permit.
- D) The District "has broad express and implied powers to provide and conserve water, to collect money for services, and to restrict water use during an emergency" and the District did not apply sections 118-301, 118-308, 118-325, 118-326, 118-332, 118-363, and 118-371 "in an arbitrary or irrational manner."

- E) “The number of water fixtures used by the District to determine charges reasonably relates to a proper legislative goal,” “the rules of the District, in conformity with the enabling legislation, conserve and provide water to the Monterey Peninsula and are not unreasonable, arbitrary or capricious,” and the “[a]llocation of water based on the numbers and types of fixtures for a property has a real and substantial relation to the object sought to be attained, i.e., water conservation.”

Appellate Court Findings

The Thums appealed the trial court decision to the Appellate Court. Below are the Appellate Court findings.

- 1) The Thums present no argument that they were not barred from challenging the deed restrictions to which they agreed in obtaining the water permit nor have they cited any legal authority to support such argument. Accordingly, their challenge to the trial court’s determination pursuant to is deemed waived.
- 2) The Thums insist that the validation judgment does not bar the present challenges to the connection charges because the judgment was limited to validating a “bond financing plan for a \$34 million dam that was never built.” This assertion is simply incorrect. The judgment itself did not validate any bond financing plan. Rather, it clearly adjudicated that ordinance No. 21 is valid, correct, and lawful. Moreover, the rule adopted by the ordinance did not limit the use of collected connection charges to the financing of a particular water supply project. “The sole purpose” of all the “connection charge” funds, which remains to this day the “planning for, acquiring, and/or reserving augmented water supply capacity for District water distribution facilities.” (Rule 24-G-2; see Ord. No. 21 [former rule 24-A-11].) Those purposes still encompass “engineering, hydrologic, geologic, fishery, appraisal, financial, and property acquisition endeavors.” (*Ibid.*) Those funds may still be “used to acquire, maintain, and/or reserve capacity in existing water distribution facilities existing within the District.” (*Ibid.*) Contrary to the Thums’ claim, the purpose of connection charge funds has not materially changed. The Thums also argue that material modifications to rule 24 extinguished any res judicata protection provided by the 1986 validation judgment. Although the Thums have pointed out significant changes to rule 24 subsequent to the enactment of ordinance No. 21, they have not shown that their central contention, that the District has no statutory authority whatsoever to impose any charge for adding a residential water fixture, could not have been adjudicated in the validation proceeding. We reiterate that a validation judgment conclusively resolves “all matters therein adjudicated or which at that time could have been adjudicated”
- 3) Further, the essential premise of the rule has not changed. Former rule 24, as adopted by ordinance No. 21, provided that “[t]he addition of any fixture unit by a user shall be deemed an intensification of use requiring an expansion/extension permit, or an amended permit pursuant to these Rules and Regulations.” (Ord. No. 21 [former rule 24-A-1].) It required the District’s general manager to determine the “fixture unit count,” using a table assigning “fixture unit value” to particular fixtures, for an applicant’s anticipated intensification of residential water use facilitated by additional fixtures. (Ord. No. 21 [former rule 24-A-3].) It further provided that “[t]he connection charge for

intensification of use from an existing connection shall exact a charge only as it relates to the extra increment of water which will be available to and subject to use by the applicant as the function of the relocated, increased, or altered use from the connection.” (Ord. No.21 [former rule 24-A-2].) The Thums incorrectly suggest that former rule 24 only applied to a “new water connection.”

- 4) Former rule 24, as adopted by ordinance No. 21, established a formula for calculating the residential “connection charge” imposed upon an applicant for a water permit. Although the District may have altered the formula for calculating the “connection charge” imposed upon a residential water user, the Thums are not challenging those changes. Rather, the Thums seek to challenge the District’s authority under the District Law to impose any charge at all. This issue was impliedly determined against them by the validation judgment because it was an issue that “at that time could have been adjudicated” Appellant have not shown that a finding made in enacting ordinance No. 98, indicating that the District is “mindful that people, not fixtures, use water,” has any effect on this conclusion.
- 5) It is our conclusion that, unless otherwise statutorily limited, the District may adopt rules to regulate residential water use capacity to ensure the availability of sufficient water for all present and future beneficial uses. (§ 118-325.) Our conclusion is not undermined by the Thums’ claims regarding the District Law’s limited objectives. It is true that regulation of household water use capacity was not a primary purpose of enacting the District Law. Nevertheless, the Legislature envisioned the District as the entity providing comprehensive water management for the Monterey Peninsula area and recognized the District’s conservation objectives. The Legislature intended the District to provide integrated management of water in the Monterey Peninsula area due to existing water problems and a shortage of water resources. It intended the District to have multiple functions, including “management and regulation” of “the use” and “conservation of water.” (§ 118-2.) As described, the District Law granted very broad powers to the District. An Enrolled Bill Report explained the background of the bill enacting the law: “A private company, the California-American Water Company, presently controls the production, distribution, and the sale of water in the area. Although ‘CalAm’ is regulated by the Public Utilities Commission, there is no public agency to manage water resources or regulate water use. . . . AB 1329 would create a public agency with extensive powers to regulate water use in the Carmel River basin and Monterey Peninsula areas.” Focusing on the statutory phrase “as limited in this law” in section 118-325, the Thums suggest the District’s authority there under is restricted to the statutory powers granted elsewhere in the District Law. We have concluded that the grant of power described in section 118-325 is very broad except as circumscribed by any specific limitation in the District Law. The Thums maintain that section 118-332 is such a limitation and it precludes regulation of household water fixtures. We disagree. Given the District’s broad powers and purposes, we find it unreasonable to conclude that section 118-332 prevents the District from regulating residential water use capacity under its authority “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.”
- 6) The Thums assert that the imposition of connection charges before the District furnishes water services violates sections 118-308 and 118-326, subdivision (b). They insist that a

“connection charge” is “a fee for connecting a user to a utility’s facilities” and the District has no authority to impose connection charges for additional residential water fixtures. The broad statutory language of the District Law empowers the District to fix and collect charges for any of its services, not just for supplying water. Even though the charge is denominated a “connection charge” by the District, it is not a charge for initially connecting to a water distribution system. The District’s authority under the District Law to collect charges for services is not narrowly restricted to charges for furnishing water or connecting to a water distribution system. Broadly speaking, the District’s services include “planning for, acquiring, reserving, and maintaining capacity in the water distribution facilities existing or to be constructed within the District.”

- 7) The Thums assert, that the District’s water permit inspections violate the Fourth Amendment to the United States Constitution and article I, section 13 of the California Constitution. The trial court did not resolve those constitutional issues. It did find, however, that the Thums “agreed to the District’s inspection” and their “rights under Article I, section 1, of the California Constitution were not violated.” Respondents contend that “the trial court’s determination regarding the Thums’ consent to the inspection effectively moots the Thums’ argument.”
- 8) The record does not demonstrate that the Thums’ consent to inspection was coerced and, therefore, involuntary. Therefore, we find it unnecessary to resolve the Thums’ statutory and constitutional claims that the District has no right to conduct residential inspections to confirm permit compliance or to obtain a warrant upon refusal of consent.