

This meeting has been noticed according to the Brown Act rules. This agenda was posted on Wednesday, June 1, 2016.



**Ordinance No. 152
Oversight Panel**

Members:

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

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**

June 7, 2016, 10:30 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.*

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

1. Update on Annual Water Supply Spending – Discuss Proposed Budget and Capital Improvement Plan for FY 2016-17
2. Review of Revenue and Expenditures of Water Supply Charge Related to Water Supply Activities

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

3. Develop Recommendation for 2016 Annual Report
4. Consider Adoption of Minutes of September 24, 2015 and February 29, 2016 Committee Meetings

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

5. Update on District User Fee and CPUC
6. Water Supply Project Update

Adjourn

Staff reports regarding these agenda items will be available for public review on Thursday, June 2, 2016 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, June 3, 2016. 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: DISCUSSION ITEM

1. UPDATE ON ANNUAL WATER SUPPLY SPENDING – DISCUSS PROPOSED BUDGET AND CAPITAL IMPROVEMENT PLAN FOR FY 2016-17

Meeting Date: June 7, 2016 **Budgeted:** N/A

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

Prepared By: David J. Stoldt **Cost Estimate:**

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

Please see Exhibits 1-A and 1-B for discussion at the meeting.

EXHIBITS

1-A FY 2016-17 Capital Improvement Plan

1-B Water Supply Charge Proposed Budget

EXHIBIT 1-A

**Monterey Peninsula Water Management District
Large Projects and Capital Improvement Plan
Fiscal Year 2016-2017 Budget**

<u>Division</u>	<u>Project Description</u>	<u>FY 2016-2017</u>	<u>FY 2017-2018</u>	<u>FY 2018-2019</u>	<u>Funding Source</u>
Funded From District Revenues					
P&E/GMO	Groundwater Replenishment Project	\$1,576,500	\$1,000,000	\$0	District Revenues
P&E/GMO	GWR Operating Reserve Fund	\$0	\$223,500	\$894,000	District Revenues
P&E/GMO	GWR Drought Reserve Fund	\$0	\$0	\$162,931	District Revenues
WRD	Phase 1 Aquifer Storage & Recovery	1,025,900	22,000	11,680	District Revenues
WRD	ASR Expansion	18,500	50,000	0	District Revenues
P&E	Cal-Am Desal Project - Public Financing	200,000	300,000	30,000	District Revenues
P&E	Local Water Projects	466,900	200,000	200,000	District Revenues
P&E	Operations Modeling - Los Padres Reservoir Expansion	25,000	0	0	District Revenues
P&E	Operations Modeling - IFIM/GSFlow	152,000	250,000	125,000	District Revenues
P&E	Carmel & Salinas Rivers Basin Study	45,000	95,000	80,000	District Revenues
P&E	Los Padres Dam Long Term Plan	0	200,000	300,000	District Revenues
P&E/GMO	Drought Contingency Plan	82,500	102,000	40,500	District Revenues
All	Capital Asset Purchases	115,500	100,000	100,000	District Revenues
GMO	Water Allocation Process	0	900,000	400,000	District Revenues
	SUBTOTAL	\$3,707,800	\$3,442,500	\$2,344,111	
Reimbursed from Grants or Reimbursements					
P&E/GMO	Drought Contingency Plan	110,400	0	0	USBR
P&E	Los Padres Dam Long Term Plan	500,000	300,000	200,000	CAW
WRD	Phase 2 Aquifer Storage & Recovery	159,900	0	0	CAW
WRD	Sleepy Hollow Facility Raw Water Intake Retrofit	200,000	0	0	SCC Grant
	SUBTOTAL	\$970,300	\$300,000	\$200,000	
No Identified Source of Funds					
WDD	Database Project	60,000	540,000	0	Unknown
	SUBTOTAL	60,000	540,000	0	
	TOTAL CIP	4,738,100	4,282,500	2,544,111	

EXHIBIT 1-B

Monterey Peninsula Water Management District

Water Supply Charge Proposed Budget

	FY 2015-2016 Revised Budget	FY 2016-2017 Revised Budget
Beginning Fund Balance	\$2,555,559	(\$500,591)
Water Supply Charge	\$3,400,000	\$3,400,000
Carry-Forward Prior Year Water Supply Charge	0	0
Loan Proceeds for ASR	0	0
Capacity Fee	175,000	175,000
Project Reimbursement	373,800	631,400
Watermaster-Reimbursement	70,200	74,600
Property Taxes	425,500	614,000
Interest	4,500	14,000
Other	-	10,000
Capital Equipment Reserve Fund	44,800	-
Carry Over Projects from Prior Fiscal Year	1,061,000	914,300
Total Revenues	\$5,554,800	\$5,833,300
Direct Personnel	956,119	961,419
Legal	250,000	240,000
Project Expenditures [see below]	6,219,550	3,770,050
Project Expenditures-Reimbursements [see below]	409,000	966,500
Fixed Asset Purchases	74,400	19,800
Contingencies	25,000	23,200
Debt Service	230,000	230,000
Election Expense	20,000	-
Measure O Costs	-	-
Indirect Labor*	203,781	203,781
Indirect Supplies & Services*	223,100	214,200
Total Expenditures	\$8,610,950	\$6,628,950
Net Revenue Over Expenses**	(\$3,056,150)	(\$795,650)
Ending Fund Balance	(\$500,591)	(\$1,296,241)
	FY 2015-2016 Revised Budget	FY 2016-2017 Revised Budget
Project Expenditures		
Groundwater Replenishment Project	\$4,633,000	\$1,576,500
ASR Phase I	\$323,300	\$1,025,900
Reimbursement Projects	\$409,000	\$966,500
Cal-Am Desal Project	\$140,000	\$200,000
Drought Contingency Plan	\$0	\$192,900
ASR Expansion	\$8,300	\$18,500
Other Water Supply Projects - IFIM/GSFlow	\$255,000	\$103,000
Local Water Projects	\$466,000	\$466,900
Alternate Desal Project	\$350,000	\$0
Other Project Expenditures	\$43,950	\$186,350
Total Commitments	\$6,628,550	\$4,736,550
*: Indirect costs as percent of Water Supply Charge	12.6%	12.3%

ORDINANCE NO. 152 OVERSIGHT PANEL

ITEM: DISCUSSION ITEM

**2. REVIEW OF REVENUE AND EXPENDITURES OF WATER SUPPLY CHARGE
 RELATED TO WATER SUPPLY ACTIVITIES**

Meeting Date: June 7, 2016

**From: David J. Stoldt
 General Manager**

Prepared By: Suresh Prasad

SUMMARY: Please refer to **Exhibits 2-A** and **2-B** that will be discussed at the June 7, 2016 committee meeting.

EXHIBITS

2-A MPWMD Water Supply Charge Receipts

2-B MPWMD Water Supply Charge Availability Analysis

EXHIBIT 2-A

Monterey Peninsula Water Management District

Water Supply Charge Receipts

	FY 2013-2014 Revised Budget	FY 2013-2014 Audited Actuals	FY 2014-2015 Revised Budget	FY 2014-2015 Audited Actuals	FY 2015-2016 Revised Budget	FY 2015-2016 Actual thru 04/30/16
Water Supply Charge	\$3,400,000	\$3,412,207	\$3,400,000	\$3,327,701	\$3,400,000	\$3,336,701
Percentage collected over budget		100.4%		97.9%		98.1%

EXHIBIT 2-B

Monterey Peninsula Water Management District

Water Supply Charge Availability Analysis

	FY 2013-2014 Revised Budget	FY 2013-2014 Audited Actuals	FY 2014-2015 Revised Budget	FY 2014-2015 Audited Actuals	FY 2015-2016 Adopted Budget	FY 2015-2016 Thru 03/31/2016
Beginning Fund Balance		\$6,060,318	\$3,892,112	\$3,892,112	\$3,511,577	\$3,511,577
Water Supply Charge	\$3,400,000	\$3,412,207	\$3,400,000	\$3,327,701	\$3,400,000	\$1,985,810
Carry-Forward Prior Year Water Supply Charge	1,413,218	0	0	0	0	0
Loan Proceeds for ASR	1,496,101		0	0	0	0
Capacity Fee	175,000	223,625	175,000	159,250	175,000	251,775
Project Reimbursement	2,420,762	2,093,013	626,900	712,002	953,100	88,440
Property Taxes	317,848	333,267	657,750	740,898	488,000	292,880
Interest	3,000	12,799	4,500	20,199	4,500	11,955
Other	-	16,010	-	12,112	-	7,841
Capital Equipment Reserve Fund	-	-	41,800	-	-	-
Total Revenues	\$9,225,929	\$6,090,921	\$4,905,950	\$4,972,162	\$5,020,600	\$2,638,701
Direct Personnel	764,549	883,237	908,936	884,281	954,719	651,428
Legal	230,000	285,853	230,000	241,583	250,000	221,497
Project Expenditures [see below]	5,734,179	4,540,839	3,760,400	3,259,930	5,357,700	2,180,690
Project Expenditures-Reimbursements [see below]	2,235,762	1,925,068	591,400	113,455	722,300	65,827
Fixed Asset Purchases	34,300	35,919	78,150	38,752	59,600	14,060
Contingencies	10,250	-	10,250	-	25,000	-
Debt Service	230,000	219,136	230,000	225,209	230,000	70,070
Election Expense	52,500	-	-	-	75,000	14,720
Measure O Costs	-	-	-	185,583	-	-
Indirect Labor*	205,051	206,230	200,314	200,314	203,781	152,836
Indirect Supplies & Services*	167,399	162,845	204,000	203,590	224,900	166,515
Total Expenditures	\$9,663,990	\$8,259,127	\$6,213,450	\$5,352,697	\$8,103,000	\$3,537,643
Net Revenue Over Expenses**	(\$438,061)	(\$2,168,206)	(\$1,307,500)	(\$380,535)	(\$3,082,400)	(\$898,942)
Ending Fund Balance		\$3,892,112	\$2,584,612	\$3,511,577	\$429,177	\$2,612,635
Project Expenditures	FY 2013-2014 Revised Budget	FY 2013-2014 Audited Actuals	FY 2014-2015 Adopted Budget	FY 2014-2015 Audited Actuals	FY 2015-2016 Adopted Budget	FY 2015-2016 Thru 03/31/2016
Groundwater Replenishment Project	\$3,656,351	\$3,383,991	\$2,494,000	\$2,524,911	\$2,833,000	\$1,459,997
ASR Phase I	\$1,168,478	\$428,049	\$522,400	\$307,218	\$996,900	\$232,793
Reimbursement Projects	\$2,235,762	\$1,925,068	\$591,400	\$113,455	\$722,300	\$65,827
Cal-Am Desalination Application	\$50,000	\$59,443	\$75,000	\$106,614	\$510,000	\$92,253
Peninsula Water Supply Projects Operations Studies	\$0	\$0	\$0	\$0	\$0	\$0
ASR Expansion	\$45,000	\$5,420	\$50,000	\$1,320	\$50,400	\$0
Other Water Supply Projects - IFIM/GSFlow	\$275,000	\$209,432	\$75,000	\$72,301	\$150,000	\$33,176
Local Water Projects	\$150,000	\$100,000	\$150,000	\$0	\$295,000	\$14,500
Alternate Desal Project	\$300,000	\$287,633	\$225,000	\$153,133	\$350,000	\$325,000
Other Project Expenditures	\$89,350	\$66,871	\$169,000	\$94,433	\$172,400	\$22,971
Total Commitments	\$7,969,941	\$6,465,907	\$4,351,800	\$3,373,385	\$6,080,000	\$2,246,517
*: Indirect costs as percent of Water Supply Charge	11.0%	10.8%	11.9%	12.1%	12.6%	16.1%

Recent Activities:

	Date	Amount
Deep Water Desal Cost Sharing Agreement	08/19/2013	\$ 800,000
Cal-Am Desal Structuring & Financing Order	2015	460,000
Cal-Am Professional Fees for Contribution of Public Funds	2014	75,000
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	2015	178,637

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

ORDINANCE NO. 152 OVERSIGHT PANEL

ITEM: ACTION ITEM

3. DEVELOP RECOMMENDATION FOR 2016 ANNUAL REPORT

Meeting Date: June 7, 2016 **Budgeted:** N/A

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

Prepared By: David J. Stoldt **Cost Estimate:**

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

Summary: The Panel has the opportunity to make recommendations or provide guidance to the District Board. Exhibit **3-A** shows the 2014 Annual Report. In 2015, the Panel did not choose to file a Report. Recommendations provided in the Annual Report are non-binding on the Board.

Recommendation: The Panel should determine (a) if it wishes to submit an annual report for 2016, (b) reach consensus recommendations and/or guidance, and (c) develop a plan for drafting and approval of the report.

EXHIBIT

3-A Example: 2014 Annual Report

EXHIBIT 3-A

Ordinance 152 Citizen's Oversight Panel

2014 Annual Report

2013-14 Topics of Discussion

The following areas of discussion represent five key topics the Panel has identified of particular interest or concern.

1. **15% Overhead Calculation:** The District presently allocates “indirect labor, supplies, and services” to the calculation of overhead. However, the District continues to include certain labor costs of the General Manager, division managers, and other staff as direct costs of “water supply.” Some members of the Panel believe that several costs identified by the District as direct costs should be included as overhead. District staff disagrees.
2. **Deficit Spending:** Given the mid-year budget adjustment to the Pure Water Monterey groundwater replenishment (GWR) project budget, the District did not identify a current source of funds for all costs and will, in fact, incur borrowing from the credit line or use of reserves to meet some GWR costs. It is expected that the practice will continue in the 2014-15 budget for GWR. Such near-term borrowing to meet current pay-as-you-go capital costs is expected by the District to be repaid from future Water Supply Charge collections. The Panel is very concerned that obligating future collections does not result in a balanced budget and results in future claims on the Water Supply Charge which impairs the ability of the District to “sunset” the charge in a timely fashion.
3. **GWR Overhead:** The Panel does not necessarily agree that MRWPCA internal staff costs should be charged to the GWR project and would like additional information about overhead charged to the project.
4. **Measure O Initiative:** District staff has indicated that it believes that Ordinance 152 would allow the Water Supply Charge to be utilized for the proposed feasibility study should Measure O be passed by the voters on June 3rd. To the contrary, at its January 2014 meeting the Panel unanimously agreed that use of the Charge for such purposes is inappropriate and strongly urges the District Board to avoid designating the Water Supply Charge for such purposes.
5. **Local Projects:** The Panel continues to support the use of a portion of the Water Supply Charge for Local Projects, such as the Pacific Grove non-potable water source and the Airport well repurposing. As such, the Panel recommends appropriation of a similar sum of money from the Water Supply Charge for the FY 2014-15 budget.

Primary Panel Function

The Ordinance 152 Citizen's Oversight Panel (the "Panel") is a committee formed for the sole purpose of providing a forum for public involvement in the budgeting and expenditure of the District's annual Water Supply Charge. The Panel is directed to meet quarterly and review proposed expenditure of funds for the water supply activities of the District. The Board does not seek consensus from the Panel, but rather input on the ongoing budgeting and expenditure of revenues raised by the water supply charge on water supply related activities. The Panel will submit an annual report for consideration by the Board of Directors. This document serves as that annual report. In the Panel's by-laws, the report is to be submitted at the September Board meeting, however, the initial panel was not constituted until December 2012, meeting for the first time in early 2013. Hence, the first year of the Panel's activities just closed.

Also under its by-laws, the Panel is expected to visit District facilities – to be scheduled by the District – to become better acquainted with water supply projects and operations. During the past year, the Panel visited the Aquifer Storage and Recovery site and heard a presentation on the Pure Water Monterey Groundwater Replenishment project.

The Panel will also, from time to time, be requested to provide community input with respect to water supply-related activities. One key area during the past year was the Panel's encouragement of the creation of funding for Local Water Project, as discussed more within this report.

Pursuant to the Ordinance, proceeds of the water supply charge may only be used to fund District water supply activities, including capital acquisition and operational costs for Aquifer Storage and Recovery (ASR), Groundwater Replenishment (GWR), and desalination 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. No more than fifteen (15%) of proceeds collected by reason of Ordinance No. 152 shall be used to fund general unallocated administrative overhead.

Panel Composition

The Panel meets the definition of a "legislative body" as defined by the Brown Act; therefore, all meetings shall be noticed and open to the public in compliance with the Brown Act.

The Panel is comprised of 9 members who shall reside within the boundaries of the Monterey Peninsula Water Management District. Members of the Panel shall serve at the pleasure of the District Board.

The Board shall appoint one member from a panel of three persons nominated by the Monterey Peninsula Taxpayers Association, and the Board shall appoint one member from a panel of three persons nominated by the Monterey County Association of Realtors, and each Director shall appoint 1 member to the Panel. Appointees must reside within the District boundaries and may be associated with a community group, but does not have to officially represent any community group.

- a) Each appointee shall serve a term of two years, with terms expiring on January 1, or on the date the appointing Director vacates office as a member of the MPWMD Board of Directors, whichever shall occur first.
- b) A quorum of five (5) Panel members shall be required for an official meeting to be conducted. Action may be taken by majority vote of those Panel members present.
- c) The General Manager will serve as Chair to the Panel, for purposes of facilitating meetings. District staff will provide support to the committee as appropriate.

ORDINANCE NO. 152 OVERSIGHT PANEL

ITEM: ACTION ITEM

4. CONSIDER ADOPTION OF MINUTES OF SEPTEMBER 24, 2015 AND FEBRUARY 29, 2016 COMMITTEE MEETINGS

Meeting Date: June 7, 2016

**From: David J. Stoldt
General Manager**

Prepared By: Arlene Tavani

SUMMARY: Minutes of the February 29, 2016, and September 24, 2015, committee meetings are attached as **Exhibits 4-A and 4-B**, respectively.

RECOMMENDATION: Review the minutes and adopt them by motion.

EXHIBITS

4-A Minutes of February 29, 2016, Committee Meeting

4-B Minutes of September 24, 2015, Committee Meeting



EXHIBIT 4-A

DRAFT MINUTES
Ordinance No. 152 Oversight Panel of the
Monterey Peninsula Water Management District
February 29, 2016

Call to Order The meeting was called to order at 10:30 am in the conference room at the offices of the Monterey Peninsula Water Management District.

Committee members present:

John Bottomley
Paul Bruno
Jason Campbell
Jody Hanson - arrived at 10:34 am
Todd Kruper
John Bottomley
George Riley
Christine Monteith - arrived at 10:34 am
John Tilley

MPWMD Staff members present:

David J. Stoldt, General Manager
Suresh Prasad, Administrative Services Manager
Arlene Tavani, Executive Assistant

District Counsel Present:

David Laredo

Committee members absent:

All present

Comments from the Public:

No comments were directed to the committee.

Action Items

- 1. Consider Modification to Committee Quarterly Meeting Schedule**
No action taken. The quarterly meeting schedule was not modified.

Discussion Items

- 2. Review Supreme Court Decision on MPWMD User Fee**
Stoldt distributed a copy of Supreme Court decision in S208838 in which the court determined that the California Public Utilities Commission (CPUC) did not have authority to review the Water Management District's user fee that was collected on the California American Water utility bill on behalf of the District. The case was reassigned to the CPUC. Stoldt explained that when the District is able to access the user fee, it may be possible for the District to recoup the monies that have not been collected since 2012. He asked the committee members if they would support collection of the user fee along with the water supply charge, and possibly collection of the fees accumulated since 2012. The responses are listed here. (a) I think you will choose not to collect. (b) You should collect those fees, because if the District loses in the legal challenge on

collection of the water supply charge, that user fee might be needed to pay back water supply charges. (c) If you collect the water supply charge and the user fee, those will equal a higher amount. (d) Double collection is an issue. (e) Prefer that past user fees not be collected. It is best to continue collection of the water supply charge because those funds are good collateral for repayment of loans for project construction. (f) You should collect as much money as possible. You should retain the right to recapture the uncollected user fees. (g) Apply the uncollected user fees to pay off the loan. (h) Agree with previous speaker– you could then sunset the water supply charge. (i) Repayment of the Rabobank loan should be a priority. (j) I would approve collection of the uncollected user fee to pay off the Rabobank loan. This would be justified because if you had been able to collect the user fee since 2012, you would not have needed the Rabobank loan.

3. Review Mid-Year Budget Adjustments to Water Supply Charge

Prasad reviewed Exhibit 3-A that was submitted in the committee packet. Bruno stated that his company bids on construction of water project infrastructure related to the water supply projects, but believes he has no conflict of interest as a member of the Ordinance No. 152 Oversight Panel.

4. Review of Revenue and Expenditures of Water Supply Charge Related to Water Supply Activities

Prasad reviewed Exhibits 4-A and 4-B that were submitted with the committee packet.

Other Items

5. Report on Cal-Am Rate Design Proceeding: No discussion.

6. Water Supply Project Update

Stoldt noted that for the current injection season, the Aquifer Storage and Recovery project injected nearly 300 acre-feet of Carmel River water into the Seaside Groundwater Basin.

Adjourn: The meeting was adjourned at 11:50 am.



EXHIBIT 4-B

DRAFT MINUTES
Ordinance No. 152 Oversight Panel of the
Monterey Peninsula Water Management District
September 24, 2015

Call to Order The meeting was called to order at 9:00 am in the conference room at the offices of the Monterey Peninsula Water Management District.

Committee members present:

Paul Bruno
Jason Campbell
Todd Kruper
John Bottomley
George Riley
Christine Monteith
John Tilley

MPWMD Staff members present:

David J. Stoldt, General Manager
Suresh Prasad, Administrative Services Manager
Arlene Tavani, Executive Assistant

District Counsel Present:

David Laredo

Committee members absent:

Jody Hanson
Norm Yassany

Comments from the Public:

No comments were directed to the committee.

Action Items

1. Consider Adoption of Minutes of February 19 and May 13, 2015 Committee Meetings

On a motion and second, the minutes were approved by the committee members present.

2. Review and Provide Recommendation on FY 2015-16 Local Water Projects/Grants Applicant Submissions

On a motion by Riley and second of Kruper, the committee recommended that the Board of Directors prioritize funding of the Pebble Beach and City of Seaside projects, reduce the grant amounts, and allocate funds according to public interest issues . The motion was approved unanimously on a vote of 7 – 0. No comments from the public were directed to the committee on this item

Stoldt described each project to the committee, received comments and responded to questions. Committee comments: (A) The Seaside project is a good use of water. There is no cost-sharing proposed, but that is less important because this will produce useable water within a short timeframe. The City of Seaside could develop a low-cost method

for metering and charging for the water, or distribute the water at no cost, so that it would benefit users throughout the area. (B) Would the wastewater agency in Seaside pay for the project? *Response: No. Wastewater customers cannot be required to pay for a project they will not benefit from.* (C) The Seaside and Pebble Beach projects are the two highest priority projects. (D) The Monterey project is focused on preparation of studies; development of water is far into the future. (E) Offer \$80,000 to Pebble Beach Company, instead of \$100,000. (F) A private company could develop the Pebble Beach Company project and own the water. *Response. That is true; however, the Water Management District would like to allocate that water to benefit the community.* (G) If the City of Monterey project is proposed to be a regional effort, why doesn't the Water Management District undertake the project? *Response. The state may require that every basin have a stormwater plan, in that case this project may be undertaken as a regional effort utilizing Proposition 1 funds.*

Discussion Items

3. Discuss Groundwater Replenishment Project Credit Structure and O&M Cost Requirements under Water Purchase Agreement

Stoldt responded to questions about the Water Purchase Agreement, and Resolution 2015-14, which is the District's pledge of revenues from the Water Supply Charge to guarantee repayment of government loans. The Water Purchase Agreement states that Cal-Am will not pay for water that it does not use. Committee Comments: (A) Is another Proposition 218 charge to be approved in order to guarantee this pledge? *Response: No. It could be paid from the existing Water Supply Charge, but we would need to show that a portion of the charge should continue to be collected for 30 years. This is a guarantee of process, not of outcome. It states that should the funds be needed, the Board would seek Proposition 218 funding, but it does not bind the public to approve it.* (B) Without Resolution No. 2015-14 the 1% financing option from State Revolving Funds would not be available for the project. (C) Why couldn't the cost of unused water be incorporated into the rate Cal-Am will pay? *Response: That would not offer insurance to the bond holder that you have collected enough money to pay costs during an interruption.* (D) Object to Cal-Am's unwillingness to enter into a take-or-pay contract. If Cal-Am's desalination project is halted, could the same financing mechanism be used to develop the DeepWater Desal project and would DeepWater Desal agree to a take-or-pay contract? *Response: DeepWater Desal has contracted with a firm to develop a financing model that anticipates 80% of the financing to be paid from take-or-pay contracts.* (E) The District should tell Cal-Am that if it will not accept a take-or-pay contract, the District will withdraw its support for Cal-Am's desal project and will back DeepWater Desal. *Response: Cal-Am has said that under those circumstances they would resort to building a larger desal plant. The CPUC allows Cal-Am to earn interest on the cost of projects they construct, so a larger project would be a benefit to the company.* (F) Cal-Am's decision to only pay for water that is produced is an effort to protect the rate payers. *Response: This is a pledge to seek Proposition 218 funding should Cal-Am be unable to pay for water, such as in the event of bankruptcy. An operating reserve will be established to pay financing costs in the event the project is not operational. In the event of drought, a drought reserve will be established to treat water and store it until the water is needed. The treatment costs will be repaid when the water is sold.*

4. Review Revenue and Expenditures of Water Supply Charge Related to Water Supply Activities

Prasad presented Exhibit 4-A, Water Supply Charge Receipts, and Exhibit 4-B, Water Supply Charge Availability Analysis. He responded to questions from the committee.

Adjournment

The meeting was adjourned at 10:40 am.

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ORDINANCE NO. 152 OVERSIGHT PANEL

ITEM: OTHER ITEMS

5. UPDATE ON DISTRICT USER FEE AND CPUC

Meeting Date: June 7, 2016 **Budgeted:** N/A

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

Prepared By: David J. Stoldt **Cost Estimate:**

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

SUMMARY: The California Public Utilities Commission still has not acted to reinstate the District’s User Fee on the Cal-Am bill. In a ruling on March 30, 2016 (**Exhibit 5-A**, attached) the CPUC asserted that the Water Supply Charge provided the relief sought in the original user fee applications and therefore no action was required. The District responded in its Opening Comments April 8, 2016 (**Exhibit 5-B**, attached) that the Commission was mistaken and should reinstate the User Fee immediately. Cal-Am and the CPUC Office of Ratepayer Advocates had until May 13, 2016 to provide reply comments, which they did. To date there has been no additional action by the CPUC, but the District is attempting to schedule and “all-hands” meeting, expected in late June or July.

At its April 18, 2016 meeting the District Board adopted the following recommended strategy for the Water Supply Charge and the reinstated User Fee:

- Collect both charges for at least 3 years. This would be done for 4 key reasons: (i) the User Fee would primarily fund programs already in Cal-Am surcharges (District conservation and river mitigation), so there is little “new” revenue; (ii) the Monterey Peninsula Taxpayers Association lawsuit over the Water Supply Charge remains unresolved, hence that revenue remains at risk; (iii) there are still large near-term expenditures required on water supply projects; and (iv) Cal-Am has a recent history of significant revenue undercollection, so the viability of the User Fee is at risk until the CPUC rules on a more stable rate design, and the predictability of the User Fee revenue is better known. After that time, begin to sunset or reduce collections of either or both, if possible.
- Have only a single MPWMD User Fee Surcharge on Cal-Am bill, instead of a mitigation surcharge, a conservation surcharge, and the User Fee.

- Remove the existing Conservation Surcharge and Mitigation Program expenses from the Cal-Am rates beginning July 1, 2016. Capture in MPWMD User Fee budget. Cal-Am to remain responsible for its rebate budget until the User Fee has capacity.
- Remove the same programs from the next GRC period (2018-2020).
- Calculate solely on “Total Water Service Related Charges” line on bill, ensuring that there is no “surcharge on a surcharge”, rather the User Fee is based solely on Cal-Am water and meter revenues.
- Amount to be set after additional consultation with Cal-Am and at least 30 days prior to July 1, 2016, or as soon after as allowed by the CPUC;
- Cal-Am shall remit with regularity (monthly) and automatically.
- There should be a reporting requirement by Cal-Am in order for the District to audit its receipts.
- Undercollections should get added to the WRAM and remitted to the District when collected.

The District intends to present this plan and the projected uses of both revenue sources (Exhibit 5-C) to the CPUC when a meeting is held. As a result of the CPUC’s slow response, the User Fee was not included in the FY 2016-17 budget.

EXHIBITS

- 5-A** March 30, 2016 CPUC Ruling
- 5-B** District’s Opening Comments April 8, 2016
- 5-C** User Fee and Water Supply Charge 6 Year Forecast



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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California-American Water Company (U210W) for an Order Authorizing the Collection and Remittance of the Monterey Peninsula Water Management District User Fee.

Application 10-01-012
(Filed January 5, 2010)

**JOINT RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE
LAW JUDGE SEEKING COMMENT ON REMAND FROM
CALIFORNIA SUPREME COURT**

Summary

This ruling seeks comment from the parties on this remanded proceeding.

On January 25, 2016, the California Supreme Court issued its Order in Case No. S208838. The Order set aside Commission decision 11-03-035 as well as the Commission's decision denying rehearing, Decision (D.) 13-01-040. The Court remanded the proceeding to this Commission for further proceedings consistent with the views expressed therein.

The Commission decisions that were set aside address the Monterey Peninsula Water Management District User Fee to be collected by California-American Water Company and remitted to the District. In the intervening time since the Commission's decisions, the District has implemented an alternative means to collect its User Fee that does not involve Cal-Am or any entity subject to this Commission's jurisdiction. Effective July 1, 2012, the Board of Directors of the Monterey Peninsula Water Management District adopted Ordinance 152. The purpose of Ordinance 152 was to replace and augment the former charge collected through Cal-Am's bills with a Water Supply Charge collected from the

EXHIBIT 5-A

A.10-01-012 LR1/MAB/ek4

owners of parcels that receive water from the District through Cal-Am's distribution system. The Ordinance provides for the District to collect \$3.7 million from parcel owners with a Water Supply Charge.

Currently, Ordinance 152, which has been effective for almost four years, replaces the relief requested in this Application. As a result, the parties must submit comments pursuant to the below schedule to identify what issues remain pending before the Commission related to Application 10-01-012.

1. Background

1.1. Description of the Application

On January 5, 2010, Cal-Am filed this application seeking Commission approval of "a program to fund projects currently performed by the District that are properly the Company's responsibility" by authorizing Cal-Am to "collect funds required by the [District] to carry out projects on behalf of the Company and which the Company would otherwise have to carry out."¹ The application specified that stated Cal-Am would "collect from the Company's Monterey District customers and remit to the Monterey Peninsula Water Management District the Monterey Peninsula Water Management District User Fee at the rate set by the Monterey Peninsula Water Management District's Board of Directors."² The application also sought Commission authorization to collect from its Monterey District customers all amounts recorded in its Monterey Peninsula Water Management District Memorandum Account, which it estimates will total over \$5 million if the application is pending for 18 months.

¹ Application at 2 - 3.

² Application at 19.

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In its application, Cal-Am stated that the State Water Resources Control Board has imposed a “contingent obligation” on Cal-Am to implement the Management District’s Carmel River Mitigation Program, should the Management District ever cease doing so.³ Cal-Am stated that in its 1995 decision, the Board expressed “accolades” for the Management District’s Fisheries Mitigation Program, and the Riparian Vegetation and Associated Wildlife Mitigation Program.

1.2. Commission Decision 11-03-035

On March 25, 2011, the Commission issued Decision (D.) 11-03-035 which denied the motion to approve the settlement agreement among California-American Water Company, the Monterey Peninsula Water Management District and the Division of Ratepayer Advocates. The settlement agreement stated that the parties agreed that:

1. The Management District’s Carmel River Mitigation Program is non-duplicative, and reasonable and prudent.
2. The Management District’s Aquifer Storage and Recovery Program is non-duplicative, and reasonable and prudent.
3. The Commission should authorize Cal-Am to collect and remit the user fee to the Management District at the rate set by the Management District.
4. The interest rate to be assessed on the Memorandum Account balance should be 5%.

Also in D.11-03-035, the Commission authorized Cal-Am to collect from customers the amounts it had paid to the Monterey Peninsula Water Management District and recorded in the Monterey Peninsula Water

³ Application at 10.

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Management District User Fee Memorandum Account. The Commission determined that the Monterey Peninsula Water Management District User Fee Memorandum Account would close 60 days after the effective date of the decision, and authorized Cal-Am to file a Tier 2 advice letter to amortize the amounts recorded in that account over 12 months with interest to be calculated based on the 90-day commercial paper rate.

1.3 Monterey Peninsula Water Management District Ordinance 152

Effective July 1, 2012, the Board of Directors of the Monterey Peninsula Water Management District adopted Ordinance 152. The purpose of Ordinance 152 was to replace and augment the former charge collected through Cal-Am's bills with a water supply charge collected from the owners of parcels that receive water from the District through Cal-Am's distribution system.

The Ordinance provides for the District to collect \$3.7 million from parcel owners with a Water Supply Charge. For example, a medium-large single family residence is assessed a meter charge of \$19.36 per year plus a water use fee per unit of \$77.00 for an annual total of \$96.36, which is payable on the biennial property tax bill.

1.4. California Supreme Court Decision in Case No. S208838

On January 25, 2016, the California Supreme Court issued its Decision in Case No. S208838. The Order set aside Commission Decision 11-03-035 as well as the Commission's decision denying rehearing, Decision 13-01-040. The Court remanded the proceeding to this Commission for further proceedings consistent with the views expressed therein.

In its Order, the Court analyzed Cal-Am's obligations under State Water Control Board Order No. WR 95-10. The Court held that Cal-Am is not under a

EXHIBIT 5-A

A.10-01-012 LR1/MAB/ek4

present duty to perform the mitigation work required by the State Water Control Board Order and that the Monterey Peninsula Water Management District has an independent duty to perform the mitigation work:

Indeed, under the Water Control Board's Order No. WR 95-10, Cal-Am's legal obligation to do the mitigation work is contingent on the District ceasing to do that work; because the District has not ceased to do that work, Cal-Am has no present obligation to perform the work at issue. The District is a public agency charged by statute with the task of managing water resources in the Monterey Peninsula area, including the conservation of ground and surface water and the protection of the environment. The District therefore has an independent interest in the mitigation work. The fact that the District's work also fulfills Cal-Am's legal obligation, without more, does not establish that the District is acting as Cal-Am's agent. The PUC has thus failed to identify any sound basis for exercising authority over the fee at issue in this case.⁴

The Court held that this Commission lacks ratemaking review authority over the District's mitigation program to comply with State Water Control Board's Order No. WR 95-10 because the District has an "independent interest" in performing the mitigation work. Similarly, because the District is performing the mitigation work, Cal-Am has no present obligation to perform the work at issue.

⁴ Monterey Peninsula Water Management District v. Cal. Public Utilities Commission, California-American Water Company, S208838 at 11.

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2. Analysis of Pending Issues - Water Supply Charge, Ordinance 152

As set forth above, the Monterey Peninsula Water Management District adopted its Ordinance 152 effective July 1, 2012, which provides for collection of the District's Water Supply Charge. The purpose of the Water Supply Charge is to "replace and augment" the revenue proposed to have been collected and remitted by Cal-Am in this application.

Accordingly, Ordinance 152 alters that factual premise of this application; that is, the need to collect and remit revenue to Monterey Peninsula Water District. The objective of this application having been accomplished by the District through other means, the pending application does not reflect the current state of revenue collection.

Parties may file and serve comments on whether the relief requested in Application 10-01-012 remains pending before this Commission.

Event	Date
Parties File and Serve Comments on whether the relief requested in Application 10-01-012 is moot, and if not, identifying specific issues currently remaining before the Commission and evidence supporting that contention.	April 15, 2016
Parties File and Serve Reply Comments.	May 13, 2016

EXHIBIT 5-A

A.10-01-012 LR1/MAB/ek4

Any further procedural steps shall be set by further ruling.

IT IS SO RULED.

Dated March 30, 2016, at San Francisco, California.

/s/ LIANE M. RANDOLPH

Liane M. Randolph
Assigned Commissioner

/s/ MARIBETH A. BUSHEY

Maribeth A. Bushey
Administrative Law Judge

EXHIBIT 5-B

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of California-American
Water Company (U 210 W) for an Order Authorizing
Collection and Remittance of the Monterey Peninsula
Water Management District User Fee

Application No.10-01-012
(Filed January 5, 2010)

**OPENING COMMENTS OF THE MONTEREY
PENINSULA WATER MANAGEMENT DISTRICT ON THE
STATUS OF A.10-01-012**

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Dated: April 8, 2016

Attorneys for Monterey Peninsula Water
Management District

EXHIBIT 5-B

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of California-American
Water Company (U 210 W) for an Order Authorizing
Collection and Remittance of the Monterey Peninsula
Water Management District User Fee

Application No.10-01-012
(Filed January 5, 2010)

**OPENING COMMENTS OF THE MONTEREY
PENINSULA WATER MANAGEMENT DISTRICT ON THE
STATUS OF A.10-01-012**

Pursuant to the Joint Ruling Of Assigned Commissioner And
Administrative Law Judge Seeking Comment On Remand From California Supreme
Court (“Joint Ruling”) issued March 30, 2016, the Monterey Peninsula Water
Management District (“MPWMD”) submits its comments on the status of the instant
application as directed by the Joint Ruling. The Joint Ruling directed that comments be
filed and served by April 15, 2016. These Opening Comments are timely filed.

I. INTRODUCTION

MPWMD submits these comments to urge the Commission to employ this
docket to advise the parties that in light of the recent decision of the California Supreme
Court in *Monterey Peninsula Water Management Dist. v. Public Utilities Com.*, Cal-Am
may resume collecting as the MPWMD’s User Fee as Cal-Am had for the almost three
decades prior to this proceeding.

II. BACKGROUND

**A. The Application of Cal-Am to Continue to Collect the MPWMD User
Fee for MPWMD**

On January 5, 2010, California-American Water Company (“Cal-Am”)
filed A. 10-01-012 (“Application”) seeking Commission authority to:

EXHIBIT 5-B

[C]ollect from the Company's Monterey District customers and remit to the Monterey Peninsula Water Management District the Monterey Peninsula Water Management District User Fee at the rate set by the Monterey Peninsula Water Management District's Board of Directors.¹

As the California Supreme Court noted, Cal-Am had collected the User Fee on behalf of MPWMD since 1983.²

The Joint Ruling characterizes the Application as one by which Cal-Am sought approval of "a program to fund projects currently performed by the District that are properly the Company's responsibility."³ To be absolutely clear, Cal-Am did not seek authority to collect any charge of its own. As the Supreme Court recognized, the proceeding before the Commission was clearly one addressing the User Fee promulgated by MPWMD for the benefit of MPWMD, which "Cal-Am would merely collect . . . for the District"⁴ Moreover, the caption and prayer of the Application as well as the All-Party Settlement (described below) submitted in it, sought:

- An Order Authorizing Collection and Remittance of the Monterey Peninsula Water Management District User Fee. (Caption)
- Authority to "collect from the Company's Monterey District customers and remit to the Monterey Peninsula Water Management District the Monterey Peninsula Water Management District User Fee at the rate set by the Monterey Peninsula Water Management District's Board of Directors." (Prayer of Application)
- Approval of a "Settlement Agreement allowing California American Water to collect and remit the User Fee at the rate set by the MPWMD Board of Directors. (Joint Motion for Approval of Settlement, pp. 5-6.)

¹ A. 10-01-012, p. 19. See also Application, p. 3 ("This program will, in effect, reinstate the prior practice of collecting the MPWMD 'User Fee.' The User Fee will be collected at rates set by the District's Board of Directors.")

² *Monterey Peninsula Water Management Dist. v. Public Utilities Com.* (2016) 62 Cal.4th 693, 696.

³ Joint Ruling, p. 2.

⁴ *Monterey Peninsula Water Management Dist.*, *supra*, 62 Cal.4th at p. 701.

EXHIBIT 5-B

B. The All-Party Settlement and the Commission's Response to It

On May 18, 2010, the Office of Ratepayer Advocates (“ORA”), Cal-Am, and MPWMD (“Settling Parties”) sought approval of an All-Party Settlement. The settlement would have simply permitted Cal-Am to continue to collect the User Fee promulgated by MPWMD’s (elected) Board of Directors as Cal-Am had since 1983. In both the motion seeking approval of the All-Party Settlement⁵ as well as in comments on the Proposed Decision (“PD”) rejecting the All-Party Settlement,⁶ the Settling Parties pointed out that the Commission had historically disclaimed jurisdiction over government taxes and fees such as the MPWMD User Fee.

On March 25, 2011, the Commission issued D. 11-03-035, which (1) reviewed the likely uses to which User Fee revenues would be put⁷ and (2) rejected the All-Party Settlement authorizing Cal-Am to continue to collect the MPWMD’s User Fee.⁸ By D. 13-01-040, the Commission denied MPWMD’s application for rehearing of D. 11-03-035, concluding that the Commission was vested with jurisdiction over any charge appearing on a utility bill “regardless of the originator.”⁹

C. Decision of the California Supreme Court

On January 25, 2016, the California Supreme Court set aside¹⁰ D. 11-03-035 and D. 13-01-040. At the outset of its opinion, the Court stated that:

The question before us is whether the Public Utilities Commission (PUC or Commission), which is empowered to regulate the rates and charges of public utilities, had the

⁵ Motion To Approve Settlement Agreement Between The Division Of Ratepayer Advocates, The Monterey Peninsula Water Management District And California American Water Company, p. 5.

⁶ MPWMD Comments, pp. 5–6; ORA Comments, pp. 2–3; Cal-Am Comments, pp. 10–12. See also *Monterey Peninsula Water Management Dist.*, *supra*, 62 Cal.4th at p. 698.

⁷ See D.11-03-035, pp. 11–16.

⁸ *Id.* at Ordering Paragraph 1 at p. 23.

⁹ D. 13-01-040, p. 20.

¹⁰ See Pub. Util. Code, § 1758.

EXHIBIT 5-B

authority to review the amount of the agency's fee. We conclude that the PUC did not have such authority.¹¹

The Joint Ruling states that:

The Court held that this Commission lacks ratemaking review authority over the District's mitigation program to comply with State Water Control Board's Order No. WR 95-10 because the District has an "independent interest" in performing the mitigation work.¹²

In fact, the Court's holding was considerably broader. In the portion of the opinion cited at page 5 of the Joint Ruling, the Court addressed, and rejected, a secondary argument raised by the Commission in a Supplemental Answer filed only after the Court had granted review. In that Supplemental Answer, the Commission agreed that it had no jurisdiction over MPWMD's User Fee; it argued nonetheless "that it [the Commission] . . . treated Cal-Am's subsequent application [A. 10-01-012] to continue collecting the mitigation fees as a request to impose a utility surcharge, rather than a government fee, and rejected the application on that basis."¹³ The Court rejected that

¹¹ *Monterey Peninsula Water Management Dist.*, *supra*, 62 Cal.4th at p. 695 (emphasis supplied).

¹² Joint Ruling, p. 5.

¹³ "We thus turn to the PUC's narrower argument, which it emphasized in a supplemental answer filed after we granted review in this matter. In that filing, the PUC expressly concedes that it lacks authority to review the amount of a local government fee collected through a public utility's customer bills, at least where the utility 'simply act[s] as a billing and collection agent for the government entity, and it then remits the collected funds to the government entity.' It would, however, distinguish such a 'Government Fee' from what it terms a 'Utility Surcharge'—that is, a special charge 'collected by a utility as part of its revenue requirement' that may either be 'retained by the utility[] or remitted in whole or in part to another entity for services it performs on the utility's behalf.' The PUC reasons that it has authority to regulate a utility surcharge in the same manner as any other utility charge because, like other utility charges, a utility surcharge relates to the utility's own operational costs."

"The PUC contends that its decision in this matter should be upheld because it did not 'rule on the District's ability to impose a Government Fee,' nor did it 'direct[] the District or Cal-Am to cease to collect a Government Fee.' Rather, 'concerned that a Government Fee imposed by the District might not be the most efficient and effective method of funding programs that are Cal-Am's responsibility,' the PUC 'directed Cal-Am to confer with the District and propose a possible alternative for funding program costs,' such as by way of a utility surcharge. The PUC argues that it therefore properly treated Cal-Am's subsequent application to continue collecting the mitigation fees as a request to impose a utility surcharge, rather than a government fee, and

EXHIBIT 5-B

argument for two reasons. First, it was clear to the Court that the Commission had not treated the User Fee as a “Utility Surcharge” but had instead clearly treated it as a “government fee” promulgated by MPWMD for MPWMD.¹⁴ Second, the Court rejected any suggestion that MPWMD was operating as Cal-Am’s agent such that “the fee that the District imposes on Cal-Am’s customers should therefore be treated as if it were Cal-Am’s own fee.”¹⁵ The text cited in the Joint Ruling simply explains why, in addition to the absence of any supporting evidence on the record, “[t]he fact that the District’s work also fulfills Cal-Am’s legal obligation, without more, does not establish that the District is acting as Cal-Am’s agent.”¹⁶

The Court ordered that:

PUC Decision No. 11-03-035 (rejecting Cal-Am’s application for authorization to collect the District’s user fee, and also rejecting the settlement agreement entered into by Cal-Am, the District, and the Office of Ratepayer Advocates) and PUC Decision No. 13-01-040 (denying the District’s application for rehearing) are set aside. The matter is remanded to the PUC for further proceedings consistent with the views expressed herein.¹⁷

rejected the application on that basis.” (*Monterey Peninsula Water Management Dist. v. Public Utilities Com*, *supra*, 62 Cal. 4th at pp. 700–701.)

¹⁴ “Given the record before us, this argument fares no better than the broad argument that the PUC has general authority to regulate the District’s user fee merely because it appeared on a public utility’s customer bill. As the PUC itself has previously recognized, the user fee at issue originated with the District, not Cal-Am. ([D.13-01-040 (2013 Cal. PUC LEXIS 35), p. *37] [“We clearly understood that distinction [between a Cal-Am charge and a District charge] as evidenced by our statement that *Cal-Am would merely collect [the] fee for the District, but that it is the District which originates the charge.* [Citation.]” (italics added)].)” (*Monterey Peninsula Water Management Dist.*, *supra*, 62 Cal.4th at p.701.)

¹⁵ “The PUC argues, however, that because the District is doing mitigation work that Cal-Am is legally obligated to perform, the District is not acting on its own behalf, but as Cal-Am’s agent. The PUC reasons that the fee that the District imposes on Cal-Am’s customers should therefore be treated as if it were Cal-Am’s own fee. The PUC never made such a finding, however, and we discern no basis in the record for reaching the conclusion that the District has been acting as Cal-Am’s agent in engaging in the mitigation work at issue.” (*Monterey Peninsula Water Management Dist.*, *supra*, 62 Cal.4th at p.701.)

¹⁶ *Id.*

¹⁷ *Monterey Peninsula Water Management Dist.*, *supra*, 62 Cal.4th at p.702.

III. COMMENTS ON THE JOINT RULING

A. The Commission Should Simply Acknowledge that Pursuant to the Court’s Decision, Cal-Am May Collect and Remit the MPWMD User Fee as It Has Since 1983

The Court has directed the Commission to act in a manner “consistent with the views expressed herein.”¹⁸ The action most “consistent with the views expressed herein” would be an order acknowledging that given the Court’s decision, Cal-Am may collect the User Fee on behalf of MPWMD as Cal-Am has since 1983, and as scores of Commission-regulated entities do every day throughout California.

Such an outcome is also the most consistent with the procedural course of A. 10-01-012. The application asked that the Commission permit Cal-Am to collect the User Fee for MPWMD as it has since 1983. All the active parties to the docket (ORA, Cal-Am, MPWMD. and, later, the Sierra Club)¹⁹ urged the Commission to do so. No one, before or after the Court’s decision, has advocated a contrary outcome.

B. The Resumption or Continued Cessation of the User Fee is Not a “Moot” Question

The Joint Ruling asks “whether the relief requested in Application 10-01-012 is moot.” The answer turns on an understanding of what “relief” was “requested in Application 10-01-012.” The Settling Parties and the California Supreme Court understood that the “relief” requested was authority for Cal-Am to resume collecting MPWMD’s User Fee.²⁰ Again, the action most “consistent with the views expressed [by the Court]” would be an order acknowledging that given the Court’s decision, Cal-Am indeed may resume collecting the User Fee on behalf of MPWMD.

¹⁸ *Id.*

¹⁹ In its December 7, 2011 Motion for Party Status, the Sierra Club urged the Commission to approve the All-Party Settlement submitted by ORA, Cal-Am and MPWMD. (Sierra Club Motion, p. 4.)

²⁰ “Cal-Am instead applied to the PUC for authorization to collect the District’s usual user fee and remit the collected amount to the District, as it had done in the past.” (*Monterey Peninsula Water Management Dist.*, *supra*, 62 Cal.4th at p.697.)

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As noted at page 2, *supra*, A. 10-01-012 did not seek Commission approval of “a program to fund projects currently performed by the District that are properly the Company’s responsibility.”²¹ Were the Commission to close A. 10-01-012 on the premise that no such programs exist, the Commission would not have conducted “further proceedings consistent with the views expressed [by the Court].” A decision consistent with the last sentence of Court’s opinion must honor the sentence that precedes it: “PUC Decision No. 11-03-035 (rejecting Cal-Am’s application for authorization to collect the District’s user fee, and also rejecting the settlement agreement entered into by Cal-Am, the District, and the Office of Ratepayer Advocates) and PUC Decision No. 13-01-040 (denying the District’s application for rehearing) are set aside.”²²

C. **The Level, Status, Sufficiency, or Economic Viability of MPWMD’s Water Supply Charge is Not Properly Before the Commission**

The Joint Ruling suggests that the Water Supply Charge adopted by MPWMD Ordinance 152 may obviate the necessity for Cal-Am to resume collecting the MPWMD User Fee.²³ In essence, the Joint Ruling suggests that MPWMD may no longer require the revenues previously generated by the User Fee.

First, the inquiry advanced in the Joint Ruling—“Does the District really need the money?”—is precisely that foreclosed by the Court’s decision: “The question before us is whether the . . . Commission . . . had the authority to review the amount of the agency’s fee. We conclude that the PUC did not have such authority.”²⁴

²¹ This phrase refers to the description of the type of application the Commission expected to be filed. As the Court noted, however, Cal-Am filed an application seeking to resume collection of the User Fee. (See fn. 14, *supra*.)

²² *Monterey Peninsula Water Management Dist.*, *supra*, 62 Cal.4th at p.702. (Emphasis supplied.)

²³ “Accordingly, Ordinance 152 alters that factual premise of this application; that is, the need to collect and remit revenue to Monterey Peninsula Water District. The objective of this application having been accomplished by the District through other means, the pending application does not reflect the current state of revenue collection.” (Joint Ruling, p. 6.)

²⁴ *Monterey Peninsula Water Management Dist.*, *supra*, 62 Cal.4th at p.695.

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Second, pursuant to Ordinance 152, the mitigation activities previously funded by the User Fee cannot be funded by the District's Water Supply Charge; Section 3 of the ordinance limits the use of revenues derived from it to "water supply activities."

Third, whether the User Fee is too high is a matter between the MPWMD Board of Directors and the water users that elect the members of the Board of Directors. As the Chief Justice pointed out at the conclusion of oral argument, the remedies available to a water user dissatisfied with the level of the User Fee are much broader than those available to a customer of a regulated water company whose application for rehearing of a rate increase has been denied.²⁵ As the Court concluded at the end of its unanimous opinion:

We do, however, emphasize that PUC regulation is not the only mechanism for addressing questions about the amount of the user fee or the efficiency of the District's mitigation work. If Cal-Am customers believe that the District is charging excessive and disproportionate fees, they can bring a legal action challenging the District's activities. (See, e.g., *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421 [121 Cal. Rptr. 3d 37, 247 P.3d 112]; *Moore v. City of Lemon Grove* (2015) 237 Cal.App.4th 363 [188 Cal. Rptr. 3d 130].) And if customers are concerned that the District is managed inefficiently, they can elect new leadership to the District's managing board. (Stats. 1977, ch. 527, § 203, p. 1682 [five out of seven board members directly elected by voters within district].) Whatever concerns the PUC may have about the adequacy of these existing checks on the District's activities, those concerns do not justify expanding the PUC's jurisdiction beyond the limits fixed by law.²⁶

Accordingly, an order closing this docket should acknowledge that Cal-Am may resume collection of the User Fee without regard to whether some other means of revenue collection is available to MPWMD.

²⁵ See Pub. Util. Code, § 1756(f).

²⁶ *Monterey Peninsula Water Management Dist.*, *supra*, 62 Cal.4th at p.702.

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D. The Only Issue Before the Commission is Whether to Acknowledge that the Court's Decision Permits Cal-Am to Resume Collection of the User Fee

This proceeding began with all the parties to A. 10-01-012 asking that Cal-Am be permitted to resume collecting the MPWMD User Fee (as it had since 1983) in the same manner as similarly situated government entities across California. The proceeding should conclude by acceding to that request now that the Court has resolved the question before it.

No further evidentiary showing is required.

IV. CONCLUSION

The Commission should issue an order advising the parties that in light of the recent decision of the California Supreme Court in *Monterey Peninsula Water Management District v. Public Utilities Commission*, Cal-Am may resume collection of the User Fee.

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Respectfully submitted April 8, 2016 at San Francisco, California.

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Management District

EXHIBIT 5-C

MPWMD

6/1/2016

**User Fee and Water Supply Charge
6 Year Forecast**

Scenario: No attempt to reduce shortfalls

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
GENERAL USER FEE PROGRAMS						
Sources						
Estimated Cal-Am Revenue (Note 1)	57,000,000	58,710,000	60,471,300	103,285,439	106,384,002	109,575,522
Less Undercollection at 11%	50,730,000	52,251,900	53,819,457	91,924,041	94,681,762	97,522,215
Potential General (7.125%) User Fee	3,614,513	3,722,948	3,834,636	6,549,588	6,746,076	6,948,458
Uses						
Mitigation Program (Note 2)	2,580,129	2,631,732	2,684,366	2,738,054	2,792,815	2,848,671
Conservation Surcharge Program (Note 2)	300,000	306,000	312,120	318,362	324,730	331,224
Water Demand Database Replacement	600,000					
Drought Contingency Plan Grant	82,500	102,000	40,500			
Sleepy Hollow Intake Project	200,000	-	-	-	-	-
Total Uses	3,762,629	3,039,732	3,036,986	3,056,416	3,117,544	3,179,895
Excess/(Shortfall)	(148,117)	683,216	797,650	3,493,172	3,628,531	3,768,563
ASR USER FEE PROGRAMS						
Sources						
Potential ASR (1.20%) User Fee	608,760	627,023	645,833	1,103,088	1,136,181	1,170,267
Uses						
ASR - Phase 1 (Note 3)	1,025,900	22,000	11,680	11,914	12,152	12,395
ASR - Future Phases (Note 4)	18,500	50,000		260,000	260,000	520,000
Rabobank Loan Debt Service	230,000	230,000	230,000	230,000	230,000	230,000
Rabobank Loan Sinking Fund (Note 5)			504,738	504,738	504,738	504,738
Total Uses	<u>1,274,400</u>	<u>302,000</u>	<u>746,418</u>	<u>1,006,652</u>	<u>1,006,890</u>	<u>1,267,133</u>
Excess/(Shortfall)	(665,640)	325,023	(100,585)	96,437	129,291	(96,866)
WATER SUPPLY PROGRAMS						
Sources						
Water Supply Charge	3,400,000	3,400,000	3,400,000	3,400,000	3,400,000	3,400,000
Uses						
Repay Reserves used for GWR	335,000	335,000	335,000			
Groundwater Replenishment Project	1,576,500	400,000				
GWR Operating Reserve (Note 6)		223,500	894,000	223,500	223,500	0
GWR Drought Reserve (Note 7)			162,931	217,242	217,242	217,242
Cal-Am Desalination	200,000	300,000	30,000			
Local Water Projects	466,900	200,000	200,000	200,000	200,000	200,000
Carmel River/Los Padres (Note 8)	222,000	545,000	505,000	100,000	50,000	50,000
Water Allocation Process		900,000	400,000			
Water Supply Staff	1,152,000	1,175,040	1,198,541	1,222,512	1,246,962	1,271,901
Services and Supplies	<u>477,600</u>	<u>487,152</u>	<u>496,895</u>	<u>506,833</u>	<u>516,970</u>	<u>527,309</u>
Total Uses	4,430,000	4,565,692	4,222,367	2,470,087	2,454,673	2,266,452
Excess/(Shortfall)	(1,030,000)	(1,165,692)	(822,367)	929,913	945,327	1,133,548
SUMMARY						
Total Revenues Available	7,623,273	7,749,971	7,880,470	11,052,676	11,282,257	11,518,724
Total Uses	9,467,029	7,907,424	8,005,771	6,533,154	6,579,108	6,713,480
Excess/(Shortfall)	(1,843,757)	(157,453)	(125,301)	4,519,522	4,703,149	4,805,244

NOTES:

- (1) Assumes 3.0% annual growth and \$41 million addition in 2020
- (2) Assumes 2.0% annual growth
- (3) Current draft of Seaside lease agreement
- (4) 2 well pairs; 1 in 2019, 1 in 2021; Does not include Carmel Valley well capacity
- (5) \$3,105,159 due in 2023
- (6) \$894 per AF @1000 AF in year 1; @250 AF per year three years after
- (7) \$894 per AF @243 AF/yr for 5 years
- (8) IFIM and GSFlow; Insurance; No capital included