



RESOLUTION NO. 2016-03

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
REESTABLISH USER FEE AND SUSPEND ITS COLLECTION
FOR REMAINDER OF FISCAL YEAR 2015-16**

WHEREAS, Monterey Peninsula Water Management District (“District”) District is authorized, by law, to impose rates and charges for services, facilities, or water that it may furnish, as well costs of operations and activities related to the provision of water delivered by others. (Statutes of 1977, Chapter 527, found at West’s Water Law Appendix Section 118-1, *et. seq.* (District Law), §326.);

WHEREAS, the District first implemented a User Fee in 1983 as a percentage of the California American Water (Cal-Am) bill to fund District activities and collected it continuously until temporarily suspended by the California Public Utilities Commission (the Commission or PUC) on May 24, 2011;

WHEREAS, the District modified its User Fee by Ordinance sixteen times from 1983 through 2008;

WHEREAS, proceeds of the User Fee have been used to support the District’s environmental mitigation, conservation and rationing, water supply, and any other purposes throughout the history of its collection;

WHEREAS, District Ordinance 61 adopted July 20, 1992 established a User Fee at 7.125 percent of the Cal-Am bill, an amount that was reinforced by Ordinance 67 in 1992, Ordinance 78 in 1995, and Ordinance 82 in 1996 and all four ordinances preceded Proposition 218, the self-titled “Right to Vote on Taxes Act” approved by voters November 5, 1996 and which added Articles XIII C and XIII D to the California Constitution, and made numerous changes to local government finance law, a defines a fee or charge subject to Proposition 218 as a “levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.” (Art. XIII D, §2(e).);

WHEREAS, District Ordinance 138 adopted December 8, 2008 reaffirmed the addition of a 1.20 percent to the User Fee after a Proposition 218 protest hearing, said amount to support the funding of the District’s Aquifer Storage and Recovery (ASR) program, bringing the total amount of the User Fee to 8.325 percent of the Cal-Am bill;

WHEREAS, the Commission in Decision D.09-07-021 in July 2009 prohibited further regular collection and disbursement by Cal-Am to the District of its User Fee and directed such

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amounts to be recorded in a memorandum account until Cal-Am reapplies to the Commission proposing a program to reinstate the User Fee. Such application was made January 5, 2010. A motion to approve an all-party settlement was made to the Commission in May 2010 which would have allowed continued past practice of collection of the District User Fee on Cal-Am bills. Commission decision D.11-03-035, issued March 24, 2011, rejected the joint settlement agreement. The Commission halted collection of the User Fee and ordered the memorandum account closed May 24, 2011. On January 24, 2013 the Commission issued decision D.13-01-040 modifying D.11-03-035 and denying any further rehearing of the matter;

WHEREAS, the District on February 22, 2013 filed a Petition for Review of Commission Decisions D.11-03-035 and D.13-01-040 with the California Supreme Court;

WHEREAS, on January 25, 2016 the California Supreme Court filed its opinion in the matter, determining “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 Division 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.”; and

WHEREAS, the Commission, Cal-Am and the District will work together to determine the best mechanism to end suspension of the User Fee collection on Cal-Am bills.

NOW, THEREFORE, BE IT RESOLVED, as follows:

1. The District certifies it has, without limitation, complied with all legal procedures and requirements necessary to levy and impose the User Fee, including all procedures and requirements set forth in the Constitution of the State of California, in State statutes, and in applicable decisional law of the State of California.
2. The District reestablishes its already existing, but suspended, User Fee in an amount of 8.325 percent of the Cal-Am bill, said amount comprised of 7.125 percent for the general activities of the District including environmental mitigation, conservation and rationing, water supply, and any other District purposes and 1.2 percent specific to the ASR program, including direct costs, reimbursement of reserves expended for ASR project costs, and repayment of any commercial loans expended on behalf of ASR.
3. The District suspends collection of the User Fee for the remainder of the Fiscal Year 2015-16, until the amount of annual collection can be determined by the District board and the mechanism for collection on the Cal-Am bill is determined by the Commission.
4. This Resolution shall take immediate effect, upon adoption.

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On motion of Director Brower, and second by Director Clarke, the foregoing resolution is duly adopted this 17th day of February 2016 by the following votes:

AYES: Directors Brower, Clarke, Byrne, Evans, Pendergrass and Potter

NAYS: None

ABSENT: Director Lewis

I, David J. Stoldt, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify that the foregoing is a resolution duly adopted on the 17th day of February 2016.

Witness my hand and seal of the Board of Directors this ____ day of February 2016.

David J. Stoldt, Secretary to the Board

Per the direction of David J. Stoldt,
this resolution was not signed, as it
will be superseded by Resolution
No. 2016-05.