



RESOLUTION NO. 2016-18

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
ORDERING CALIFORNIA AMERICAN WATER TO COLLECT AND REMIT
THE WATER DISTRIBUTION SYSTEM USER FEE**

WHEREAS, the Monterey Peninsula Water Management District (the District) first enacted a User Fee on Water Distribution Systems in 1983 to protect the Carmel River and its riparian corridor including visual aspects and value as wildlife habitat, stabilize the river channel, and promote the public health and safety by lessening potential local erosion damage and flood related hazards; and

WHEREAS, by 1991, the District User Fee had been expanded to include water supply activities including the five year mitigation program and conservation/rationing programs in the aggregate amount of 8.125% of the California American Water bill and to other Water Distribution Systems of fifty (50) connections or more; and

WHEREAS, the User Fee was modified again in 1992 when the drought induced water supply emergency ended, lowering the fee to 7.125%; and

WHEREAS, Ordinance No. 67, effective January 1, 1993, expanded the User Fee allocation to District programs relating to conservation, rationing, irrigation, erosion control, mitigation, water supply planning, and/or water augmentation program expenses at the Board of Director's (Board) discretion provided that all such expenses must confer benefit and/or service to existing water users; and

WHEREAS, in August 2005, the User Fee was increased by 1.2% for California American Water customers only, increasing the fee to 8.325%. Ordinance No. 123 identified the increase was needed to fund the Phase 1 expansion effort and proposed future Aquifer Storage and Recovery (ASR) expansion costs; and

WHEREAS, Ordinance No. 138 in 2008 authorized and extended collection of the 1.2% User Fee specific to ASR and Water Supply in compliance with the requirements of Article XIII D, §6(a) of the California Constitution, as construed by the California Supreme Court in *Bighorn-Desert View Water Agency v. Verjil*, 39 Cal.4th 205 (2006) and as clarified by the Proposition 218 Omnibus Implementation Act (A.B. 1260 of 2007), codified in California Government Code §53750 et seq.; and

WHEREAS, the 2008 Ordinance also provided that proceeds of the 1.2% fee could also be expended in accord with Resolutions adopted at the discretion of the Board for other purposes including water rights acquisition; and

WHEREAS, during California American Water's 2008 General Rate Case, the California Public Utilities Commission (CPUC or Commission) issued Decision 09-07-021 declining to permit California American Water to continue collecting the District's User Fee and directing California American Water to present an alternate proposal for assuming responsibility for the District's activities or performing them as a "joint project;" and

WHEREAS, on September 24, 2009, the District and California American Water entered into a reimbursement agreement to continue payments to the District to fund the District's Carmel River Mitigation Program and ASR Project but that California American Water would terminate the agreement effective May 23, 2011; and

WHEREAS, in 2010, California American Water submitted Application 10-01-012 wherein the active parties to the proceeding, the District, Office of Ratepayer Advocates (ORA), and California American Water, moved for approval of an All-Party Settlement pursuant to which California American Water would resume collecting the User Fee; and

WHEREAS, the Commission rejected the settlement on March 25, 2011 in Decision 11-03-035, denied the District's application for rehearing in Decision 13-01-040, and closed the proceeding in 13-05-001; and

WHEREAS, the District Board enacted Resolution 2011-09 on May 27, 2011 ordering California American Water to collect and remit the 8.325% User Fee as required by Ordinance 123 in installments during the fiscal year, provided full payment was tendered during that fiscal year; and

WHEREAS, on July 21, 2011, California American Water filed a Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief against the District in Monterey Superior Court, Case No. M113336, challenging the approval of Resolution 2011-09; and

WHEREAS, the relief sought by California American Water included vacating the Resolution and having the Court declare the Resolution invalid through a Reverse Validation action; and

WHEREAS, in October 2011, the District and California American Water stipulated to a stay of the Superior Court case while various matters were pending at the Commission; and

WHEREAS, the District adopted Ordinance No. 152 on June 27, 2012, imposing an annual water supply services, facilities and activities charge (the Water Supply Charge) on parcels served by the main California American Water distribution system to replace and augment a portion of the User Fee formerly collected by California American Water; and

WHEREAS, the Board adopted Resolution 2012-10 to certify compliance with Proposition 218 requirements to assess property related fees and charges; and

WHEREAS, on June 26, 2013, the California Supreme Court (Supreme Court) granted the District's Petition for review of Commission Decision 11-03-035; and

WHEREAS, on January 25, 2016, in a unanimous opinion, the Supreme Court vacated Commission Decision 11-03-035 (*Monterey Peninsula Water Management District v. Public Utilities Commission* (2016) 62 Cal.4th 693); and

WHEREAS, the Supreme Court held that since the User Fee originated with the District, the Commission had no authority to regulate local fees of public agencies (like the District) collected through a public utility's customer bills and remitted to the government entity; and

WHEREAS, the Supreme Court set aside Commission Decisions 11-03-035 and 13-01-040 and remanded the matter back to the Commission "for further proceedings consistent with the views expressed herein;" and

WHEREAS, the Commissioner and Administrative Law Judge assigned to 10-01-012 have issued rulings in that action, but have not yet directed California American Water to collect and remit the User Fee to the District in compliance with the Supreme Court order; and

WHEREAS, California American Water's compliance with District Resolution No. 2011-09 no longer conflicts with any order of the Commission; and

WHEREAS, California American Water's continued failure to comply with District Resolution No. 2011-09 and Ordinance No. 123 compromises efforts of the District to achieve the purposes required by the District's Mitigation and ASR programs, as well as its efforts to augment the supply of water available to the Monterey Peninsula. California American Water's failure to remit the full User Fee to the District interferes with mitigations required by the California Environmental Quality Act (CEQA) and significantly and adversely affects Carmel River populations of steelhead and red-legged frog, in contravention of State Water Resources Control Board (SWRCB) Order No. WR 95-10 and Order WR 2009-0060.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Monterey Peninsula Water Management District hereby republishes as though fully set forth herein Resolution 2011-09 and orders California American Water to collect and remit the 8.325% User Fee as required by Ordinance No. 123 in installments during the fiscal year, provided full payment is tendered during that fiscal year.

BE IT FURTHER RESOLVED AND ORDERED that California American Water continue to set and remit the User Fee at 8.325% of each California American Water water bill factored upon actual water use and variable as to the amount of water consumed, as required by District Ordinance No. 123.

BE IT FURTHER RESOLVED AND ORDERED that the Monterey Peninsula Water Management District act to remove the Stay Order in Monterey Superior Court Case No. M113336 and either dismiss the case or proceed with the litigation.

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

Ayes: Directors Brower, Lewis, Byrne, Clark, Evans, Pendergrass and Potter
Nays: None
Absent: None

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 October, 2016.

Witness my hand seal of the Board of Directors this 27th day of October, 2016.



David J. Stoldt, Secretary to the Board