



FINAL

RESOLUTION NO. 2018-11

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
ORDERING AN ELECTION,
REQUESTING COUNTY ELECTIONS TO CONDUCT THE ELECTION,
AND REQUESTING CONSOLIDATION OF THE ELECTION**

WHEREAS, On October 5, 2017, the Monterey County Registrar of Voters submitted to the Monterey Peninsula Water Management District (District) a copy of the Notice of Intent to Circulate an Initiative Petition entitled the “Monterey Peninsula Water System Local Ownership and Cost Saving Initiative,” and Proof of Publication of the Notice that were submitted by Public Water Now; and

WHEREAS, the stated purpose of the Initiative Petition is to establish a policy to acquire, if economically feasible, the water system assets of the California-American Water Company (Cal-Am) within the District’s territory, either through negotiation or through the exercise of eminent domain power; and

WHEREAS, the stated reasons for the action are to “ensure the long-term sustainability, adequacy, reliability, cost-effectiveness and quality of water service within the Monterey Peninsula Water Management District area, to lower the cost of service to rate-payers, to promote and practice sustainable water management measures, and to establish public ownership of water system assets by establishing regulations requiring the District to take affirmative action, to the extent financially feasible, to acquire the water system assets owned and operated by California American Water Company that currently provide water service to the District and its ratepayers”; and

WHEREAS, the Initiative Petition contains a proposed Ordinance to add Rule 19.8 to the District Rules and Regulations and requires the General Manager, within nine months of Rule’s effective date, to complete a written plan to address acquisition, ownership, and management of all water facilities and services within and outside the District. If the Plan concludes acquisition is feasible, the District shall, as soon as practicable, take all necessary and proper actions consistent with its powers under District Law and Eminent Domain Law to acquire Cal-Am’s water system assets; and

WHEREAS, the Initiative Petition requests the Measure be submitted to the voters “at the earliest regular or special election for which it qualifies pursuant to Section 1405 of California Elections Code”; and

WHEREAS, on April 27, 2018 the Monterey County Registrar of Voters verified a sufficient number of signatures on the Initiative Petition; and

WHEREAS, pursuant to California Elections Code § 9310, the District Board of Directors has determined to order the proposed be submitted to the voters, without alteration; and

WHEREAS, California Elections Code section 1405(a) provides that with certain exceptions, the election for a district initiative that qualifies pursuant to Section 9310 shall be held not less than 88 nor more than 103 days after the date of the order of election; and

WHEREAS, pursuant to section 1405, the election on the measure may be consolidated with the state regular or special election; and

WHEREAS, pursuant to Elections Code Section 10002, the District request the Board of Supervisors of Monterey permit the county elections official to render specified services to the city or district relating to the conduct of an election; and

WHEREAS, the resolution of the governing body of District shall specify the services requested; and

WHEREAS, pursuant to Elections Code Section 10002 the District shall reimburse the county in full for the services performed upon presentation of a bill to the District; and

WHEREAS, pursuant to Elections Code Section 10400, whenever two or more elections, including bond elections, are called to be held on the same day, in territory that is in part the same, they may be consolidated upon the order of the governing body or bodies or officer or officers calling the elections; and

WHEREAS, pursuant to Elections Code Section 10403, whenever an election called by a district for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot. Upon such request, the Board of Supervisors may order the consolidation; and

WHEREAS, the resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election; and

WHEREAS, various district, county, state and other political subdivision elections have been called to be held on November 6, 2018; and

WHEREAS, the Board of Directors for the Monterey Peninsula Water Management District desires to call an election on the Measure to be consolidated with the state general election on November 6, 2018; and

WHEREAS, the Board of Directors acknowledges that the consolidated election will be held and conducted in the manner prescribed in Section 10418; and

NOW, THEREFORE, BE IT RESOLVED AND ORDERED THAT the governing body of the Monterey Peninsula Water Management District hereby orders an election be called and consolidated with any and all elections also called to be held on November 6, 2018 insofar as said elections are to be held in the same territory or in territory that is in part the same as the territory of the Monterey Peninsula Water Management District and requests the Board of Supervisors of the County of Monterey to order such consolidation under Elections Code Section 10401 and 10403.

BE IT FURTHER RESOLVED AND ORDERED that pursuant to Elections Code Section 10002 said governing body hereby requests the Board of Supervisors to permit the Monterey County Elections Department to provide any and all services necessary for conducting an election and agrees to pay for said services in full, and

BE IT FURTHER RESOLVED AND ORDERED that Monterey County Elections Department shall conduct the election to approve or reject the following Measure set forth in the “Monterey Peninsula Water System Local Ownership and Cost Savings Initiative” to be voted on at the November 6, 2018 election:

MEASURE

Shall Rule 19.8 (Policy of Pursuing Public Ownership of Monterey Peninsula Water System) be added to the Monterey Peninsula Water Management District Rules and Regulations, to address public ownership of all water delivery systems in the District, to acquire through negotiation or eminent domain, all assets of California American Water to benefit the District as a whole, and within 9 months complete a written plan addressing acquisition, ownership, and management of all water facilities and services within and outside the District?

YES

NO

, and

BE IF FURTHER RESOLVED AND ORDERED THAT Monterey County Elections Department is requested to print the attached full measure text (Exhibit) exactly as filed in the Voter Guide for the November 6, 2018 election. Cost of printing and distribution of the measure text will be paid for by the district. In addition, the full text will be available at the following web site address <http://www.mpwmd.net/who-we-are/upcoming-elections/pwn-initiative-information/pwn-initiative-full-ballot-measure>.

BE IT FURTHER RESOLVED AND ORDERED THAT voter approval requirement is majority.

On motion of Director Adams, and second by Director Rubio, the foregoing resolution is duly adopted this 18th day of June, 2018 by the following votes:

AYES: Directors Adams, Rubio, Clarke and Lewis

NAYS: None

ABSENT: Directors Brower, Byrne and Evans

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 18th day of June, 2018.

Witness my hand and seal of the Board of Directors this 22nd day of June, 2018


David J. Stoldt, Secretary to the Board

EXHIBIT TO MPWMD RESOLUTION 2018-11

The people of the Monterey Peninsula Water Management District do ordain as follows:

Title: The Monterey Peninsula Water System Local Ownership and Cost Savings Initiative

Section I -- Name

This Measure shall be designated as the Monterey Peninsula Water System Local Ownership and Cost Savings Initiative.

Section II -- Purpose

The purpose of this Measure is to ensure the long-term sustainability, adequacy, reliability, cost-effectiveness and quality of water service within the Monterey Peninsula Water Management District area, to lower the cost of service to ratepayers, to promote and practice sustainable water management measures, and to establish public ownership of water system assets by establishing regulations requiring the District to take affirmative action, to the extent financially feasible, to acquire the water system assets owned and operated by the California American Water Company that currently provide water service to the District and its ratepayers.

Section III -- Findings

1. Water service in the Monterey Peninsula is currently supplied by the California American Water Company ("Cal Am"), a private, investor-owned utility that acquired the current water system in 1966.
2. Under Cal Am's ownership and management, the Monterey Peninsula's water service has become the most expensive water service in the entire United States, according to a Food and Water Watch report in June 2017.
3. Cal Am has seriously mismanaged the Peninsula's water system ever since acquiring it. In 1995, the State Water Resources Control Board ("State Board") ordered Cal Am to cease illegal pumping from the Carmel River, and to plan for a new water supply. In 2009, the State Board issued a follow-up enforcement order, and threatened Cal Am with mandatory water rationing for its failure to make adequate progress after its initial order 14 years earlier.
4. In 2007, a Monterey County Superior Court ordered Cal Am to cease its over-pumping from the Seaside Groundwater Basin that threatened the long-term sustainability of the Basin.
5. After Cal Am customers conserved substantial amounts of water in response to drought conditions, Cal Am sought approval from the California Public Utilities Commission ("CPUC") to add a surcharge to ratepayer bills to make up for its lost revenues. The CPUC approved the request and ratepayers are now paying a surcharge of \$8 million per year through 2021 for water that Cal Am did not deliver.

6. Since 2007, the total cost of water billed to ratepayers by Cal Am, including surcharges, increased from \$2,501 to \$6,484 per acre-foot, a 159 percent increase. During the same period, the consumer price index increased by merely 12.5 percent.

7. The Monterey Peninsula Water Management District ("District") was established in 1977 by State Law, which charges the District with the integrated management of the ground and surface water resources in the Monterey Peninsula area. The District retains broad powers under State Law to do any and every lawful act necessary in order that sufficient water may be available for the present or future beneficial use or uses of the lands or inhabitants within the District, including owning and operating water system assets within and outside its boundaries.

8. Whatever entity owns and manages the Peninsula's water system in the future, whether Cal Am or the District, it will face significant challenges to meet the water supply needs of residents and businesses on the Peninsula, while at the same time satisfying the requirements of the State Board's 1995 order. This will require the highest level of managerial capacity, competence, and integrity.

9. Since State Board's order was issued in 1995, the District has provided strong leadership by implementing five new water supply projects: aquifer storage and recovery using Carmel River winter runoff; Peralta Wells in Seaside; the Pebble Beach Reclamation Project; Pure Water Monterey in partnership with Monterey Regional Water Pollution Control Agency (now Monterey One Water); and reclamation of stormwater with Pacific Grove. This record shows that the District has the capacity and competence to own and manage the Monterey Peninsula's water system assets so as to provide reliable, efficient, and cost-effective water service to ratepayers far into the future.

10. By contrast, Cal Am has failed to complete three water supply projects it initiated after 1995 (Carmel River Dam, Moss Landing Desalination, and Regional Desalination Project). As a result, stranded costs in excess of \$34 million were approved by the CPUC to be charged to Cal Am's ratepayers. None of these stranded costs were charged to Cal Am or its investors. Cal Am's record shows it lacks the capacity to manage the Peninsula's water system to ensure provision of reliable, efficient, cost-effective water service to ratepayers, now and in the future.

11. Approximately 85 percent of water consumers in the United States receive their service from public agencies. Public ownership of water system assets also carries the benefit of lower interest costs of financing infrastructure improvements, while eliminating perverse, investor-driven incentives associated with a for-profit monopoly.

12. Public ownership of the Monterey Peninsula's water system will benefit residential and business customers and ratepayers by lowering water service costs, guaranteeing transparency in meetings and actions by governing bodies, assuring public access to records, and full accountability of local elected officials in water system management and water service delivery.

Section IV-- An Ordinance of the Monterey Peninsula Water Management District.

The following Rule 19.8 shall be added to the Monterey Peninsula Water Management District, Rules and Regulations, Regulation I, General Provisions:

Rule 19.8. Policy of Pursuing Public Ownership of Monterey Peninsula Water System

A. It shall be the policy of the District, if and when feasible, to secure and maintain public ownership of all water production, storage and delivery system assets and infrastructure providing services within its territory.

B. The District shall acquire through negotiation, or through eminent domain if necessary, all assets of California American Water, or any successor in interest to California American Water, for the benefit of the District as a whole.

C. The General Manager shall, within nine (9) months of the effective date of this Rule 19.8, complete and submit to the Board of Directors a written plan as to the means to adopt and implement the policy set forth in paragraph A, above. The plan shall address acquisition, ownership, and management of all water facilities and services within and outside the District, including water purchase agreements as appropriate. The plan may differentiate treatment of non-potable water services.

Section V-- Modification Only By Vote of the People

No provision of this Measure shall be changed, amended, or repealed except by a vote of the People.

Section VI -- Effective Date; Application.

The provisions of this Measure shall take effect immediately upon certification of its passage by the appropriate Election Official. Pending actions or proposals otherwise governed by this Initiative that have been initiated by the Board of Directors of the District, but that are not yet final as of the effective date, or that are the subject of pending legal challenge, shall be subject to the provisions of this Measure.

Section VII -- Severability

This Measure shall be broadly construed in order to achieve the purposes stated in this Measure. If any section, sub-section, sentence, clause, phrase, part, or portion of this Measure is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Measure. The voters of the Monterey Peninsula Water Management District hereby declare that this Measure, and each section, sub-section, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, sub-sections, sentences, clauses, phrases, parts, or portions are declared invalid or unconstitutional. If any provision of this Measure is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Measure that can be given effect without the invalid application.

Section VIII -- Conflicting Ballot Measures

In the event that this Measure and another measure or measures relating to the same or similar subject matter shall appear on the same election ballot, the provisions of the other measures shall be deemed in conflict with this measure. In the event that this Measure shall receive a greater number of affirmative votes, the provisions of this Measure shall prevail in their entirety, and the provisions of the other measure or measures shall be null and void.