

This meeting has been noticed according to the Brown Act rules. The Board of Directors meets regularly on the third Monday of each month, except in January, February. The meetings begin at 6:00 PM.



AGENDA
Special Meeting
Board of Directors
Monterey Peninsula Water Management District

Wednesday, December 23, 2020, 9:00 AM, Virtual Meeting

Pursuant to Governor Newsom's Executive Orders N-29-20 and N-33-20, and to do all we can to help slow the spread of COVID-19 (coronavirus), meetings of the Monterey Peninsula Water Management District Board of Directors and committees will be conducted with virtual (electronic) participation only using WebEx.

Join the meeting at this link:

<https://mpwmd.webex.com/mpwmd/onstage/g.php?MTID=e7d2b0147e2e47a9ca0387c9d56472e56>

Or join at mpwmd.webex.com.

Event number: 126 495 2910

Meeting password: subarea

Participate by phone: 1-877-668-4493

For detailed instructions on how to connect to the meeting, please see page 3 of this agenda.

Staff notes will be available on the District web site at

<http://www.mpwmd.net/who-we-are/board-of-directors/bod-meeting-agendas-calendar/>

by 5 PM on Friday, December 18, 2020

CALL TO ORDER/ROLL CALL

PLEDGE OF ALLEGIANCE

ADDITIONS AND CORRECTIONS TO AGENDA - The General Manager will announce agenda corrections and proposed additions, which may be acted on by the Board as provided in Sections 54954.2 of the California Government Code.

Board of Directors

Alvin Edwards, Chair – Division 1

Karen Paull, Vice Chair - Division 4

George Riley – Division 2

Vacant – Division 3

Amy Anderson – Division 5

Mary Adams, Monterey County Board of

Supervisors Representative

David Potter – Mayoral Representative

General Manager

David J. Stoldt

This agenda was posted at the District office at 5 Harris Court, Bldg. G Monterey on Friday, December 18, 2020. Staff reports regarding these agenda items will be available for public review on the District website by 5 PM on Friday, December 18, 2020. After staff reports have been distributed, if additional documents are produced by the District and provided to a majority of the Board regarding any item on the agenda, they will be posted on the District website at www.mpwmd.net/who-we-are/board-of-directors/bod-meeting-agendas-calendar/. Documents distributed at the meeting will be made available in the same manner. Persons requesting disability related modifications and/or accommodations should contact the Board Clerk 48 hours prior to the meeting at: 831-658-5652 or arlene@mpwmd.net. The next meeting of the Board is set for January 25, 2021.

ORAL COMMUNICATIONS - Anyone wishing to address the Board on matters not listed on the agenda that are within the purview of the District may do so only during Oral Communications. Please limit your comment to three (3) minutes. The public may comment on all other items at the time they are presented to the Board.

REPORT FROM DISTRICT COUNSEL ON DECEMBER 14, 2020 CLOSED SESSION OF THE BOARD

ACTION ITEM - Public comment will be received. Please limit your comment to three (3) minutes per item

1. Consider Approval of Engagement Letter with Shute, Mihaly & Weinberger LLP for Representing the District in Cal-Am v. MPWMD; Monterey Superior Court Case No. 20CV003201
Action: The Board will consider authorizing funds for litigation expenses.
2. Consider Response to State Water Resources Control Board regarding Reduction in Effective Diversion Limit under the Cease and Desist Order
Action: The Board will review a proposed response letter and consider transmitting a response to the State Water Resources Control Board.

ADJOURNMENT

Board Meeting Schedule			
Monday, January 25, 2020	Regular Board Meeting	6:00 pm	Virtual - Zoom
Thursday, January 28, 2020	Special Board Meeting	6:00 pm	Virtual - Zoom
Thursday, February 25, 2020	Regular Board Meeting	6:00 pm	Virtual - Zoom

A video recording of the meeting will be available for viewing by January 6, 2021 on the MPWMD website <https://www.mpwmd.net/who-we-are/board-of-directors/bod-meeting-agendas-calendar/> and on YouTube at <https://www.youtube.com/channel/Ucg-2VgzLBmgV8AaSK67BBRg>

See next page of agenda for instructions on connecting to the WebEx meeting

Instructions for Connecting to the WebEx Meeting

Note: If you have not used WebEx previously, when you begin connecting to the meeting you may be asked to download the app. If you do not have a computer, you can participate by phone.

Begin: Within 10 minutes of the meeting start time from your computer click on this link <https://mpwmd.webex.com/mpwmd/onstage/g.php?MTID=e7d2b0147e2e47a9ca0387c9d56472e56> or past the link into your browser or go to: mpwmd.webex.com.

Under “Join a Meeting” enter the event number 126 495 2910 , hit the enter key and when prompted enter the meeting password subarea, click “Next” and see the dropdown menu at the bottom of the screen “Use computer for audio” and select the method you will use to hear the meeting – see below.

1) Audio and video connection from computer with WebEx app – view participants/materials on your screen

Click on the “Use computer for audio” drop down list
Click “Join Meeting”
Once in the meeting, mute your microphone.
Turn your microphone on when it is your turn to speak.

2) View material on your computer screen and listen to audio on your phone

From the “Use computer for Audio” drop down list select “Call In”
Click on “Join Meeting” / You will see a toll-free telephone number, access code, and attendee ID # -- enter these numbers on your phone.
Mute the microphone on your computer.
Disable computer speakers using the Settings menu.

3) Join by phone only (no computer) dial 1-877-668-4493 and use the meeting number above.

Presenting Public Comment

- 1) The Chair will call the meeting to order.
- 2) Receipt of Public Comment – the Chair will ask for comments from the public on all items. Limit your comment to 3 minutes but could decide to set the time for 2 minutes.
 - (a) Computer Audio Connection: Select the “raised hand” icon. When you are called on to speak, please identify yourself.
 - (b) Phone audio connection **with** computer to view meeting: Select the “raised hand” icon. When you are called on to speak, please identify yourself.
 - (c) Phone audio connection only: Press *3. Wait for the clerk to unmute your phone and then identify yourself and provide your comment. Press *3 to end the call.

Submit Written Comments

If you are unable to participate via telephone or computer to present oral comments, you may also submit your comments by e-mailing them to comments@mpwmd.net with one of the following subject lines "PUBLIC COMMENT ITEM #" (insert the item number relevant to your comment) or "PUBLIC COMMENT – ORAL COMMUNICATIONS". Comments must be received by 12:00 p.m. on Tuesday, December 22, 2020. Comments submitted by noon will be provided to the Board of Directors and compiled as part of the record of the meeting.

ITEM: ACTION ITEM

- 1. CONSIDER APPROVAL OF ENGAGEMENT LETTER WITH SHUTE, MIHALY & WEINBERGER LLP FOR REPRESENTING THE DISTRICT IN CAL-AM V. MPWMD; MONTEREY SUPERIOR COURT CASE NO. 20CV003201**

Meeting Date:	December 23, 2020	Budgeted:
From:	David J. Stoldt, General Manager	Program/ Line Item No.:
Prepared By:	David J. Stoldt	Cost Estimate:

General Counsel Approval: N/A

Committee Recommendation: None

CEQA Compliance: This action does not constitute a project as defined by the California Environmental Quality Act Guidelines Section 15378.

SUMMARY: On November 25, 2020 California -American Water Company (Cal-Am) filed a petition for writ of mandate with the Monterey County Superior Court requesting that the Court issue a writ of mandate under Code of Civil Procedure section 1085, or alternatively section 1094.5, directing the District to vacate and set aside its approval of Resolution 2020-17 Certifying the Monterey Peninsula Water Management District Potential Acquisition of Monterey Water System and District Boundary Adjustment EIR.

To defend its position, the District seeks to hire the firm of Shute, Mihaly, & Weinberger LLP, a firm with significant experience with the California Environmental Quality Act (CEQA).

RECOMMENDATION: The Board should review and approve the engagement letter with Shute, Mihaly, & Weinberger LLP

EXHIBIT

1-A Shute, Mihaly, & Weinberger LLP Engagement Letter



396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

GABRIEL M.B. ROSS
Attorney
Ross@smwlaw.com

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January 17, 2020

Via E-Mail

Dave Stoldt
Monterey Peninsula Water Management
District
P.O. Box 85
Monterey, CA 93942-0085

Re: Legal Retainer Agreement for Litigation

Dear Dave:

This letter sets forth the terms under which Shute, Mihaly & Weinberger LLP (“Firm”) will provide legal services to the Monterey Peninsula Water Management District (“Client”) in connection with California-American Water Company’s challenge to the environmental review of the potential acquisition of the Monterey Water System, Monterey County Superior Court Case No. 20CV003201 (the “Litigation”). If you agree to the terms of this retainer agreement (“Agreement”), please sign one copy of this letter and return it to me at your earliest convenience. The second copy of this letter is for your files.

1. Legal Services to Be Provided

The Firm is retained to provide Client the following legal services: represent Client in all stages of the Litigation, including without limitation the negotiation, drafting, and implementation of any settlement agreement.

2. Legal Fees, Costs and Billing Practices

The Firm’s hourly billing rates for these services will be as follows:

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Dave Stoldt, MPWMD

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Partner	\$ 400
Jr. Partner	\$ 370
Associate III	\$ 355
Associate II	\$ 335
Associate I	\$ 285
Paralegal	\$ 155
Law Clerk	\$ 100

Fees will be charged in increments of one-tenth of an hour. The Firm will annually increase these billing rates consistent with any annual increase in the Consumer Price Index (October over October time period) for All Urban Consumers (not seasonally adjusted) San Francisco-Oakland-Hayward area (1982-1984 = 100) as published by the Bureau of Labor Statistics, U.S. Department of Labor, rounded to the nearest whole \$1. The Firm will implement the increase each year on January 1st, or as soon thereafter as the CPI information is published, starting on January 1st, 2022. If Client declines to pay for the Firm's services at any increased rates, the Firm will have the right to withdraw as Client's attorneys. The Firm has errors and omissions insurance coverage applicable to the services being provided under this Agreement.

Client will also reimburse Firm for costs incurred in the course of representation, including fees fixed by law or assessed by public agencies, long-distance telephone, facsimile, messenger services, postage, photocopying, and charges for electronic legal research time. In the event of out of town travel, Client agrees to pay all transportation costs, lodging, parking, and meals, as well as the hourly rates for attorney travel time. The Firm will provide detailed monthly billing statements for fees and costs incurred. Client agrees to pay the Firm's billed costs and fees within thirty (30) days following billing.

3. Potential Fee Recovery

This Firm is providing the legal services described at significantly less than commercial rates in view of the public interest nature of the case. We may seek to recover attorneys' fees and costs incurred by the Firm from adverse parties in connection with any award of sanctions, or other fee award, against adverse parties or their counsel. Under state law, those fees may be assessed on the basis of commercial rates. For your information, commercial rates for the types of services being provided under this Agreement currently range from \$650 to \$800 per hour for a partner and \$400 to \$550 per hour for an associate, and will increase during the time that this matter is underway.

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Any amounts for attorneys' fees or costs incurred by the Firm actually received by us or by Client, as a result of agreement or court order in this matter, will be distributed as follows: (a) payment to the Firm for any unpaid work on this matter, whether billed or unbilled, at the rates established with Client for this litigation, (b) payment to the Firm of the difference between the reduced rates and the commercial rates established for this case, (c) reimbursement to Client of any attorneys' fees and costs incurred by the Firm paid by Client to the Firm for any claim or portion thereof for which fees are awarded, and (d) retention by the Firm of any funds in excess of the foregoing. Notwithstanding the distribution described above, where the recovery is insufficient to pay the compensation contemplated by (b) and (c), after payment of (a), the remaining fees will be apportioned between the Firm and Client. This fee distribution scheme is not set by law but is negotiable between the Firm and Client.

Any attorneys' fees recovered as a result of this litigation may be partly or wholly taxable. The Firm does not have expertise in tax law and tax advice is specifically excluded from the scope of services the Firm will be providing under this Agreement.

4. Authorized Representative of Client

Client designates Dave Stoldt as the authorized representative to direct the Firm and to be the primary person to communicate with the Firm regarding the subject matter of this Agreement. This designation is intended to establish a clear line of authority and to minimize potential uncertainty, but not to preclude communication between the Firm and other representative of Client. Unless directed otherwise by Client, all correspondence and bills will be directed to the designated authorized representative.

5. Conclusion of Services, Discharge, and Withdrawal

Unless otherwise agreed in writing, our representation of Client under this Agreement will automatically terminate at the time we complete the legal services we have agreed to perform.

Client may discharge the Firm at any time by providing written notice to the Firm, which is effective upon receipt by the Firm. In the event of such discharge, if the Firm is Client's attorney of record in any proceeding, the Firm will promptly provide Client with a substitution of attorney form. Client will execute and return the substitution of attorney form immediately upon receipt from the Firm.

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The Firm may withdraw at any time as permitted under the Rules of Professional Conduct of the State Bar of California. A valid reason for withdrawal by the Firm would include, but not be limited to, Client's consent, Client's breach of this Agreement, Client's failure to pay fees and costs as provided in this Agreement, Client's conduct renders it unreasonably difficult for the Firm to carry out the representation effectively, or any fact or circumstances that would render the Firm's continuing representation unlawful or unethical.

At such time as the Firm's services conclude, all unpaid fees and costs will immediately become due and payable.

6. Client File

After the Firm's services conclude, the Firm will, upon Client's request, deliver to Client the file for this matter with the exception of attorney notes, correspondence, or memoranda not previously sent to Client if such material constitute attorney work product. Client agrees to pay copying and delivery costs as well as the reasonable hourly rates associated with locating, preparing, and transmitting the file (whether in paper or electronic form).

If Client does not request the file for this matter at the conclusion of representation, the Firm will retain the file for a period of five years after the matter is closed. If Client does not request delivery of the file for this matter before the end of the five-year period, the Firm will have no further obligation to retain the file and may, at the Firm's discretion, destroy it without further notice to Client.

7. No Guarantee

Nothing in this Agreement and nothing in the Firm's statements to Client will be construed as a promise or guarantee about the outcome of this matter. The Firm makes no such promises or guarantees.

8. Conflicts Waiver and Consent

Please be advised that our Firm represents public agencies, private organizations, and individuals in a range of matters throughout California and on energy law matters throughout the United States. Accordingly, it is agreed, and you hereby consent, that our attorney-client relationship with you in this matter will not serve as a basis for the Firm's disqualification from representing other clients or parties in any legal

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proceedings, cases, controversies, or matters, other than those in which we represent you, except if and to the extent absolutely and non-waivably required by the Rules of Professional Conduct.

10. Electronic Communication Tools and Devices

In order to maximize efficiency and responsiveness in representing Client, we intend to use electronic communications tools and devices (such as email, electronic transfer and storage of documents, cellular telephones, and “smart phones”) to a significant extent during our representation. The use of such devices under current technology may place Client’s confidential information and privileges at risk. However, we believe the effectiveness and efficiency involved in use of these devices outweighs the risk of accidental disclosure or malicious access. By executing this Agreement, Client acknowledges Client’s consent to the use of these tools and devices without any encryption or other special protections.

11. Execution of Agreement

If this Agreement is satisfactory, please execute a copy and return it to me. This Agreement will be effective when it is signed by you. However, this Agreement will apply to any services we may provide in connection with the engagement before the execution date.

The undersigned represents and warrants that it is authorized to execute this Agreement and bind Client to its terms and conditions.

This Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, “electronic signature” shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

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Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Gabriel M.B. Ross

ACCEPTED AND AGREED:

David Stoldt, Monterey Peninsula Water
Management District

Name _____

Title _____

Date _____

1320088.2

ITEM: ACTION ITEM**2. CONSIDER RESPONSE TO STATE WATER RESOURCES CONTROL BOARD REGARDING REDUCTION IN EFFECTIVE DIVERSION LIMIT UNDER THE CEASE AND DESIST ORDER**

Meeting Date:	December 23, 2020	Budgeted:
From:	David J. Stoldt, General Manager	Program/ Line Item No.:
Prepared By:	David J. Stoldt	Cost Estimate:

General Counsel Approval: N/A**Committee Recommendation: None****CEQA Compliance: This action does not constitute a project as defined by the California Environmental Quality Act Guidelines Section 15378.**

SUMMARY: On November 17, 2020 the State Water Resources Control Board (SWRCB) issued a letter to California American Water (Cal-Am) stating that "regardless of control or fault, the 1,000-acre-foot Effective Diversion Limit reduction is an appropriate and intended consequence of Cal-Am's missing Milestone 5."¹ The District and the Monterey Peninsula jurisdictions, and others, were copied on the letter.

The letter appeared to be in response to an October 21, 2020 letter by Cal-Am to the SWRCB, which included several spurious and debunked claims, as well as the outrageous accusation that the District was the cause of missing Milestone 5.

Staff prepared a draft response to the SWRCB which was reviewed by the Board at its December 14, 2020 meeting. Extensive revisions were made and the revised proposed draft letter is attached hereto as **Exhibit 2-A**.

RECOMMENDATION: The Board should review the draft response, recommend additional changes if desired, and consider authorizing the General Manager to send to the SWRCB.

EXHIBIT**2-A Draft response by District to SWRCB**

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¹ SWRCB letter of November 17, 2020 page 2, line 28



December __, 2020

Eileen Sobeck
Executive Director
State Water Resources Control Board (SWRCB)
1001 I Street
Sacramento, CA 95814

RE: November 17, 2020 SWRCB Letter to California American Water regarding Order
WR 2016-0016, Ordering Paragraph 3.b.viii – 2020 Joint Annual Report

Dear Ms. Sobek:

On November 17, 2020 you issued a letter to California American Water (Cal-Am) stating that "regardless of control or fault, the 1,000-acre-foot Effective Diversion Limit reduction is an appropriate and intended consequence of Cal-Am's missing Milestone 5."¹ The Monterey Peninsula Water Management District (District) and other Monterey Peninsula jurisdictions, were copied on the letter.

The letter appears to be in response to an October 21, 2020 letter by Cal-Am to the SWRCB which included several spurious and debunked claims, as well as the outrageous accusation that it was the District's fault Cal-Am missed Milestone 5.

The District wishes to respond to your letter and some of the factually incorrect assertions made by Cal-Am in its letter to you. The District respectfully suggests that:

- There was inadequate consultation with Cal-Am's fellow Applicants.
- The SWRCB may be misinterpreting who is responsible for requesting a hearing under Ordering Paragraph 3.b.viii.
- Missing Milestone 5 was not the cause of, or within the control of, any of the Applicants.
- The Effective Diversion Limit reduction should be waived.

Your letter notes that "Cal-Am clarified that it does not request the State Water Board schedule such a presentation or make such findings or actions regarding Milestone 5." and "Cal-Am is prepared to meet customer demands and to comply with the reduced Effective Diversion Limit in Water Year 2020-2021."² However, that decision is not Cal-Am's alone to make. As you

¹ SWRCB letter of November 17, 2020 page 2, line 28

² Ibid, page 2, paragraph 2

Ms. Eileen Sobek
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correctly state at the top of page 2 of your letter, the Order has a provision under which the request to make a presentation is to be made in consultation with Cal-Am's fellow Applicants. Cal-Am made no effort whatsoever to engage its fellow Applicants on this matter, and the District as one of those original Applicants disagrees with Cal-Am's unilateral approach.

Ordering Paragraph 3.b.viii requires a Joint Annual Report which is to indicate "whether Applicants expect the Milestone to be achieved by its Deadline and, if not, whether the Milestone will be missed for reasons beyond Applicants' control." This was submitted June 4, 2020 and stated that Milestone 5 would likely be missed and that it was beyond the control of the Applicants: "In light of the stay imposed by the Superior Court, and the delay in the Coastal Commission's hearing on Cal-Am's application for a coastal development permit, Cal-Am will not be able to meet Milestone 5."³ The Report said nothing about the District being the cause of the missed milestone.

Ordering Paragraph 3.b.viii also states "If requested, Cal-Am, in coordination with Applicants, shall present written and/or oral comments on the progress towards Milestones at a regularly scheduled State Water Board meeting that falls at least 60 days after submission of the report." This provision does not spell out who may request such a presentation. The District, as one of the original Applicants hereby requests the opportunity to make such a presentation of evidence to support its request that the SWRCB suspend any corresponding reductions under Condition 3.b.vi.

Contrary to Cal-Am's spurious claims in its October 21, 2020 letter – which contradicts the June 4, 2020 Joint Annual Report – the missed Milestone 5 was not the fault of any Applicant and certainly not the District. Rather, it was simply due to the lack of a timely hearing on the Coastal Development Permit and delays imposed by the Superior Court.

There are other incorrect statements made by Cal-Am in its October 21, 2020 letter that are addressed below:

- (a) The District's water supply and demand analysis is not misleading. It's methodology is sound and its principal conclusions were confirmed by highly qualified third parties. Its sources are carefully footnoted.
- (b) The water supply and demand analysis was not "specifically rejected by the CPUC," because it was done AFTER the CPUC had issued its decision on the desalination project and closed the application;
- (c) There was never "a deliberately manipulated consultant's memorandum" to support the supply and demand analysis. We believe Cal-Am is referring to excerpts the District took from the Benito/Williams technical memorandum modeling assumptions contained in the Pure Water Monterey SEIR appendices, to show that build-up of Aquifer Storage and Recovery storage would be sufficient to meet a 5-year drought – a completely different issue than the supply and demand analysis – and that excerpt has been used on

³ Joint Annual Report, June 4, 2020, page 3, last paragraph

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multiple occasions and cited to its authors;

(d) The District's analysis does, in fact, account for critical protections of the Seaside Groundwater Basin; and

(e) Cal-Am has never demonstrated or proven any of the District's analysis to be misleading or incorrect.

We very much appreciate your encouragement to Cal-Am "to continue to engage collaboratively with other Applicants and interested parties to resolve disputes, to secure other near-term solutions for ending Cal-Am's unauthorized Carmel River diversions by December 31, 2021, and to develop longer-term water supply solutions..." However, we also respectfully request that the SWRCB provide the forum to review the evidence under Ordering Paragraph 3.b.viii and suspend any corresponding reductions under Condition 3.b.vi.

Sincerely,

David Stoldt
General Manager
Monterey Peninsula Water Management District

CC: [via email]

E. Joaquin Esquivel
joaquin.esquivel@waterboards.ca.gov

Erik Ekdahl, SWRCB
Erik.Ekdahl@waterboards.ca.gov

Steven Westhoff, SWRCB
Steven.Westhoff@waterboards.ca.gov

Richard Svindland, California American Water
Rich.Svindland@amwater.com

Ian Crooks, Vice President, California American Water
Ian.Crooks@amwater.com

Chris Cook, Director of Operations, California American Water
Christopher.Cook@amwater.com

Mayor Bill Peake, City of Pacific Grove
bpeake@cityofpacificgrove.org

Mayor Clyde Roberson, City of Monterey

Ms. Eileen Sobek
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December __, 2020

roberson@monterey.org

Mayor Ian Oglesby, City of Seaside
ioglesby@ci.seaside.ca.us

Mayor Mary Ann Carbone, City of Sand City
maryann@sandcityca.org

Mayor Alison Kerr, Del Rey Oaks
akerr@delreyoaks.org

Mayor Dave Potter, City of Carmel-by-the Sea
dpotter@ci.carmel.ca.us

David Stivers, President, Pebble Beach Company
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