

From: [John Tilley](#)
To: [Bill Peake](#); [Dave Stoldt](#); [Dave Stoldt](#); [David Laredo](#); [Jason Campbell](#); [John Tilley](#); [Kevan Urquhart](#); [Marli Melton](#); [Melodie Chrislock](#); [Mike Rachel](#); [Sandra Kandell](#); [Scott Dick](#); [Suresh Prasad](#); [Susan Schiavone](#); [Joel Pablo](#)
Subject: Fw: Ordinance 152 Reserves, the Water Supply Charge and The Mechanics Bank Loan
Date: Thursday, January 13, 2022 6:42:33 PM
Attachments: [Rabo Bank Term Sheet 2012.pdf](#)
[Legal Opinion on Ord 152 Reserves February 6, 2019.pdf](#)
[April 6, 2012 Use of Funds Item 12D.pdf](#)
[Board Presentation Justifying Ordinance 152 April 16, 2012.pdf](#)

Fellow Members of the 152 Committee, District Employees and Mr. Laredo,

Wishing everyone a healthy start to 2022.

When I saw the agenda for tomorrow's meeting I took a look at the 152 panel charge on the District's website and found these consecutive sentences:

"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 at its regular September meeting."

What is on the agenda; the annual report written by the District itself, past the required timing, asking for a majority vote and not expressing the various views of committee members, should not be acceptable to the committee members. This annual report is not acceptable to me.

Providing the 152 Committee editing of this report is necessary.

Thank you and I look forward to our meeting tomorrow.

John Tilley

----- Forwarded Message -----

From: John Tilley <the5amswim@yahoo.com>
To: alvinedwards420@gmail.com <alvinedwards420@gmail.com>; georgetriley@gmail.com <georgetriley@gmail.com>; water@mollyevans.org <water@mollyevans.org>; jcbarchfaia@att.net <jcbarchfaia@att.net>; gqhw1000@gmail.com <gqhw1000@gmail.com>; dpotter@ci.carmel.ca.us <dpotter@ci.carmel.ca.us>; district5@co.monterey.ca.us <district5@co.monterey.ca.us>; David <dstoldt@mpwmd.net>; Arlene Tavani <arlene@mpwmd.net>
Sent: Friday, June 5, 2020, 02:55:59 PM PDT
Subject: Ordinance 152 Reserves, the Water Supply Charge and The Mechanics Bank Loan

June 5, 2020

The Board Members of the Monterey Peninsula Water District

Mr. David Stoldt, General Manager of the Monterey Peninsula Water District

Dear Board Members and Mr. Stoldt,

I am writing you as a member of the Ordinance 152 Citizen's Oversight Panel to express my profound concern regarding the Mechanic's Bank loan maturing in 2023 and any attempt to shift the reserves built

via collection of the Water Supply Charge to purposes clearly not the intent of Ordinance 152.

Ordinance 152 was adopted on June 27, 2012 with board members Brower, Markey, Byrne, Lewis and Pendergrass voting for its approval. The Ordinance was passed in response to a brief suspension of the User Fee and the expressed intent to “replace and augment” that funding stream.

Ordinance 152 clearly states revenues are to be used to fund “actual costs to provide water supply services” and “Supply charge proceeds will be expended only to fund water supply services and for no other purpose”. Section Ten establishes a date of December 31, 2017 as a cut-off for funded projects to be “identified and determined by the Board of Directors to have been underway”. As a point of reference, Measure J was passed in November of 2018.

Furthermore, the General Manager’s report from April 16, 2012 (attached) stated that these funds are clearly intended to support the work needed to fulfill the promise of the supply portfolio including Aquifer Storage and Recovery, Pure Water Monterey Phase One and the CalAm desalination plant. The full meeting package is found [here](#). Item 12 D (attached) states “*Hence, the fees are being raised for water supply activities. Section 3 of the Ordinance specifically limits the purposes to the GWR and ASR projects and purposes that confer benefit and/or service to existing main Cal-Am water users 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*”.

On December 11th of 2012 the MPWMD Board passed a resolution approved by members Byrne, Lehman, Lewis, Markey and Pendergrass to “approve obtaining a loan from Rabobank . . . for reimbursement of the Aquifer Storage Recovery costs”. The need for the loan was premised on “the District has not been able to collect the User Fee”. In summary, the User Fee temporarily went away, the Water Supply Charge was not yet providing the revenue needed and expenses for Aquifer Storage and Recovery (ASR) were mounting. The Rabobank loan was obtained and used to build-out ASR while the Water Supply Charge was expected to be the source or repayment of the loan.

The Rabobank term sheet (attached) emphasizes the direct connection between the loan, the Water Supply Charge and ASR. Here are two pertinent excerpts from the Rabobank term sheet showing the use of funds was ASR and repayment would come from the WSC:

Use and Investment of Proceeds: Bond proceeds will be used to finance infrastructure owned by the District, reimburse the District for costs incurred in connection with infrastructure, pay off an existing line of credit, fund the Debt Service Reserve Fund, and fund cost of issuance.

Nature of Obligation and Repayment: Debt will be secured by a pledge of the District’s water supply charge.

As a member of the Ordinance 152 Citizen’s Oversight Panel I ask that the purpose and intent of Ordinance 152 be honored. There is currently a three million dollar cash reserve in the Ordinance 152 fund and a 3 million dollar debt to be paid. The reserve was built via collection of the Water Supply Charge. The loan was taken to build the infrastructure needed to supply water. It is time for the reserves collected to be used to pay for the infrastructure work already accomplished. While staff secured a legal opinion (attached) promoting the idea that funds from Ordinance 152 *could* be repurposed, doing so raises serious ethical, legal and financial risks for the District.

It has always been the expectation of the public and the ratepayers that the District sunset the Water Supply Charge and not double collect fees. I urge the Board to commit the reserves to paying off the Rabobank loan as intended and refrain from the unethical temptation of misusing those reserves to pay for Measure J. The Water Supply Charge was created to pay for building the Water Supply Portfolio and should be used solely for that purpose as it was intended. Now is the time to do so as there are no pre-payment penalties on the Rabobank/Mechanics Bank loan.

I urge the board to act responsibly and transparently. Diverting Water Supply Charge funds outside of the

intended purpose is not only of questionable ethical standards, but clearly puts the District at serious legal and financial risks.

Respectfully yours,

John Tilley

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ITEM: PUBLIC HEARING**12 D. PRESENTATION FROM GENERAL MANAGER ON BUDGET AND COST ALLOCATION ISSUES FOR USER FEE**

Meeting Date:	April 16, 2012	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: N/A		
CEQA Compliance: N/A		

SUMMARY: At its February 23, 2012 meeting, the Board directed staff to implement a Proposition 218 process for the development of water fees and charges, including the hiring of a rate consultant and the development of the necessary ordinances, resolutions, and notices for implementation thereof.

This item provides additional background about the uses of the proposed new annual water use fee.

BACKGROUND: The Monterey Peninsula community has expressed a strong desire for construction and operation of new water supply, implementable by December 31, 2016 in order to meet the restrictions on unlawful diversions from the Carmel River as mandated the State Water Resources Control Board Order 95-10 and the Cease and Desist Order.

The proposed regional water supply solution includes a portfolio of three projects: A single scalable desalination facility, a Groundwater Replenishment project (GWR), and completion of Aquifer Storage and Recovery (ASR.) Of these, GWR and ASR have a public ownership component and the disposition of desalination is presently unknown, but it is expected that Cal-Am will submit an

application to the California Public Utilities Commission (CPUC) April 23, 2012 that will indicate a privately owned and operated desal plant.

These projects will cost money.

The costs of water supply capital projects will add costs to the District's budget, over and above existing resources. The largest source of revenue in the District's budget has traditionally been the District's "User Fee", which through a recent CPUC decision, the District's ability to collect has been impaired, further exacerbating the revenue shortage.

On October 11, 2011, the Water Supply Planning Committee recommended the Board direct the General Manager and Administrative Services Manager to examine alternate approaches to secure the collection of the User Fee going forward and report back at a future meeting. At its October 17, 2011 Board Meeting, the Board made such direction under Item 5 "CONSIDER AUTHORIZATION FOR STAFF TO EXAMINE ALTERNATIVE APPROACHES TO ESTABLISH / INCREASE USER FEE TO FUND WATER SUPPLY PROJECT PLANNING AND IMPLEMENTATION." This item was discussed in an update at the January 23, 2012 Board meeting and a schedule for implementation was provided. At its February 23, 2012 meeting, the Board directed staff to implement a Proposition 218 process for the development of water fees and charges, including the hiring of a rate consultant and the development of the necessary ordinances, resolutions, and notices for implementation thereof.

The District has embarked on the path of seeking to raise \$3.7 million directly from properties within the District that are Cal-Am customers.

The District's draft Capital Improvement Plan (CIP) ([Exhibit 12-D](#)) for the next two fiscal years identifies \$2,958,644 of project expenditures for FY 2012-13. Of these, \$2,848,771 are related to water supply projects. The two highest priority projects are completion of Water Project 1 (Aquifer Storage and Recovery Phase 1) and the District's 50% pay-as-you-go portion of costs of Groundwater Replenishment. The FY 2012-13 estimate for costs related to these two projects is \$1,921,715. The overall direct capital costs for FY2013-14 are \$3,331,570 under the CIP. An additional \$1.7 million of staff, services, and supplies is allocable to water supply, water resource planning, and water demand functions of the District. This would allow the District to allocate the full \$3.7 million to costs directly related to water supply.

The District proposes to reduce expenditures for its other activities where possible, including mitigation and conservation, but without disrupting legally mandated requirements or leaving grant-funded or reimbursed programs unserved.

Additionally, the District expects to have Cal-Am directly pay a greater share of the Mitigation Program expenses on a recurring basis, approximately \$1.6 million each year until the mitigation activities are no longer required by law or can be transitioned.

Hence, the fees are being raised for water supply activities. Section 3 of the Ordinance specifically limits the purposes to the GWR and ASR projects and purposes that confer benefit and/or service to existing main Cal-Am water users 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.

EXHIBIT

12-D Draft Capital Improvement Plan

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Public Hearing Item 12(D)

Budget and Cost Allocation Issues

April 16, 2012 Regular Meeting
Staff Contact: D. Stoldt

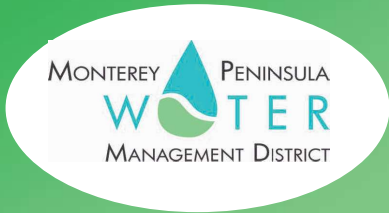




Community Criteria

The Monterey Peninsula Community wants Water Supply Projects that meet these criteria:

- Storage or Drought Resistant
- Reliable
- Meets Peak Demand
- Technically Proven
- Timely Implementation by 12/31/16



What's the Plan?

What Fits the Criteria...	What Doesn't Appear to Fit...
Desalination	Table 13 Water Rights
Aquifer Storage and Recovery	Salinas River Water Rights
Groundwater Replenishment	Dams
	Over-Reliance on ASR
	Some Desal Proposals
	Over-Reliance on Conservation

Component 3 - GWR

- 3,300 AF
- Complete by 2016
- Public Component
- 3-Party MOU (MRWPCA, MPWMD, Cal-Am)
 - Water Purchase Agt
 - Storage & Recovery Agt
 - Wholesale Water Sales Agt
 - District 50% pay-as-you-go funding match
 - District to provide long-term financing



Component 2 - ASR

- Double ASR Capacity
- Complete by 2016
- Public and Private Components
- Work jointly with Cal-Am
- **Additional MPWMD Capital Costs** Next 2-3 Years
- District will continue to develop future ASR opportunities



Component 1 - Desal

- 6,500+ AF
- Completion date depends on Key Issues:
 - Requirement and timeline for a new CEQA process or not
 - Additional technical assessment and scoping of project alternatives
 - Ease in permitting
 - Water rights
 - Cost of financing and operations
 - Litigation risk
- Is it a Public Path or a Private Path?
- Can MPWMD assist with lower cost financing and/or revolving fund loans?

Key Understanding

Projects Cost Money





Capital Improvement Plan

Draft CIP

	FY2012-13	FY2013-14
Water Supply: Aquifer Storage and Recovery Phase 1 Completion	\$885,165	\$435,314
Water Supply: Groundwater Replenishment	1,036,550	1,469,200
Water Supply: Studies for Combined Desal, GWR, and ASR Operations	150,000	250,000
Water Supply: ASR Expansion Study – Part 1(Scoping locations)	150,000	
Water Supply: ASR Expansion Study – Part 2 (Easements & Test Wells)		500,000
Water Supply: Feasibility studies – Other Projects	200,000	200,000
Water Supply: Repayment of Advances for ASR	427,056	427,056
Other District Programs: Capital	109,873	50,000
TOTAL CIP	\$2,958,644	\$3,331,570

*Plus, personnel, services, & supplies for water supply
was \$1.6 million in FY 2011-12*

Water Supply & Budget

- Water Supply Projects are additive to existing budget
- Reduce District expenditures for other activities, where possible w/o disrupting legal mandates
- Seek to have Cal-Am directly pay a greater share of mitigation costs (at least \$1.6 million/year)
- Doing so allows 100% of new revenue source to be used on new water supply costs



Summary Use of New Fees

	Budgeted Amount	Available From New Fees
Direct Capital per CIP	\$2,959,000	\$2,488,000
Staff, Supplies, Services - Water	<u>1,618,000</u>	<u>1,212,000</u>
Total	4,577,000	3,700,000

Conclusion



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This meeting has been noticed according to the Brown Act rules. This agenda was posted on Thursday, March 28, 2019.



Ordinance No. 152

Oversight Panel

Members:

Bill Bluhm

John Bottomley

Paul Bruno

Jason Campbell

Patie McCracken

Susan Schiavone

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**

Monday, April 1, 2019, 3 PM

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.*

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

1. Consider Adoption of November 15, 2018 Committee Meeting Minutes
2. Approve Draft 2018 Oversight Panel Annual Report to the MPWMD Board of Directors
3. Approve 2019 Committee Meeting Schedule

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

4. Review of Revenue and Expenditures of Water Supply Charge Related to Water Supply Activities
5. Discuss Performance of District User Fee, To Date
6. Discuss Actions Related to Rule 19.8 - Development of the Feasibility Study on Public Ownership of the Monterey Peninsula Water System

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

7. Water Supply Project Update

Adjourn

Staff reports regarding these agenda items will be available for public review on Thursday, March 28, 2019 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 by 5 PM on Thursday, March 28, 2019. 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

ACTION ITEM

1. CONSIDER ADOPTION OF NOVEMBER 15, 2018 COMMITTEE MEETING MINUTES

Meeting Date: April 1, 2019

From: David J. Stoldt
General Manager

Prepared By: Arlene Tavani

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

SUMMARY: Draft minutes of the November 15, 2018 committee meeting are attached as Exhibit 1-A.

RECOMMENDATION: Review the minutes and adopt them by motion.

EXHIBIT

1-A Draft Minutes of November 15, 2018 Committee Meeting



DRAFT MINUTES

**Ordinance No. 152 Oversight Panel of the
Monterey Peninsula Water Management District
*November 15, 2018***

Call to Order The meeting was called to order at 3:00 pm in the conference room at the offices of the Monterey Peninsula Water Management District.

Committee members present:

Bill Bluhm
John Bottomley
Paul Bruno
Jody Hanson
An McDowell (arrived at 3:30 pm)
Susan Schiavone
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:

Jason Campbell
Ian Oglesby

Comments from the Public:

No comments were directed to the committee.

Action Items

1. **Consider Adoption of July 23, 2018 Committee Meeting Minutes**
On a motion by Bruno and second of Bluhm, the minutes were adopted as presented on a vote of 7 – 0. McDowell was not present for the vote.

Discussion Items

2. **Review of Revenue and Expenditures of Water Supply Charge Related to Water Supply Activities**
Suresh Prasad, Administrative Services Manager, reviewed Exhibit 2-A – Water Supply Charge Receipts and responded to questions. He also reviewed Exhibit 2-B – Water Supply Charge Availability Analysis and responded to questions. General Manager Stoldt submitted a document titled, Analysis of Reserves Fiscal Year 2018-2019 Budget and responded to questions. He noted that the reserve balance was \$10,707,607 consisting of Mitigation, Water Supply and Conservation funds. Preparation of the feasibility study required by Rule 19.8 would likely be funded from reserves. The District has begun to pre-fund pension and OPEB liabilities from the reserves. The \$3.2 million Rabobank loan also must be funded.

3. Discuss Performance of Reinstated District User Fee, To Date

Mr. Stoldt reviewed the chart titled MPWMD User Fee Revenue Collections FY 2018-2019 and responded to questions.

Other Items

4. Water Supply Project Update

No discussion.

5. Measure J Discussion

Mr. Stoldt explained that the District has \$407,000 available to fund preparation of the feasibility study as required by Rule 19.8. If the effort to purchase California American Water's water production facilities is determined to be feasible, the issue will move to a bench trial. If Cal-Am prevails in that proceeding, the District must pay all legal fees, which were \$13 million when the City of Claremont lost its bid to purchase the private entity.

The committee discussed the question of whether or not to utilize water supply funds to pay for preparation of the feasibility study. There was consensus that the water supply charge was intended to fund water supply projects, and that reserves sourced from water supply funds should not be used to pay for feasibility study preparation. The committee expressed support for paying off the Rabobank Loan as soon as possible.

Adjourn: The meeting was adjourned at 4:25 pm.

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ORDINANCE NO. 152 OVERSIGHT PANEL

ITEM: ACTION ITEM

2. APPROVE DRAFT 2018 OVERSIGHT PANEL ANNUAL REPORT TO THE MPWMD BOARD OF DIRECTORS

Meeting Date: April 1, 2019 **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 2-A** attached is a draft 2018 Annual Report on which the committee is requested to provide suggested edits or changes at its April 1 meeting. Recommendations provided in the Annual Report are non-binding on the Board.

RECOMMENDATION: The Panel should attempt to reach consensus on a final set of recommendations that reflect the majority of committee members, and forward a finalized report to the Board.

EXHIBITS

2-A Draft 2018 Annual Report

Ordinance 152 Citizens Oversight Panel

2018 Annual Report

2018 Recommendations

The following areas of discussion represent three key topics the Panel has identified of particular interest or concern during the recent calendar year.

1. **Measure J Costs:** The panel believes that the Water Supply Charge was intended for projects to solve the region's longstanding water supply problem and should not be used to fund any of the costs related to Measure J. That includes the cost of the feasibility study, costs related to a "right to take" bench trial, the costs related to a subsequent jury trial to establish fair compensation, and/or the costs of acquisition.
2. **Dual Collection of the Water Supply Charge and District User Fee:** The User Fee began collection in July 2017. The Panel recognizes the plan adopted by the District Board in April 2016 to collect both fees for a 3-year period because: (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) there are still large near-term expenditures required on water supply projects; and (iii) Cal-Am has a recent history of significant revenue undercollection, so it makes sense to have a period of collection until the predictability of the User Fee revenue is better known.

Therefore, the Panel reminds the Board that the next fiscal year will be the third year of dual collection, therefore it is time to begin a plan for their use, including reductions or possible sunsets of either or both.

Rabobank Loan and Other District Obligations: The Panel urges the District to develop a plan to retire the Rabobank loan that was initiated to pay for the Aquifer Storage and Recovery water supply project in a timely fashion after the District's User Fee was suspended by the CPUC.

Respectfully submitted by the Ordinance 152 Citizens Oversight Panel, April 15, 2019.

ORDINANCE NO. 152 OVERSIGHT PANEL

ACTION ITEM

3. APPROVE 2019 COMMITTEE MEETING SCHEDULE

Meeting Date: April 1, 2019

From: David J. Stoldt
General Manager

Prepared By: Arlene Tavani

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

SUMMARY: According to the Ordinance No. 152 Oversight Panel charge, the panel should meet in January, April, July and October of each year. It is proposed that for the remainder of 2019, the Panel meet at 10 am on the second Thursday of the identified months, which will be July 11 and October 10.

RECOMMENDATION: Approve the July 11 and October 10, 2019, 10 am meeting dates.

ORDINANCE NO. 152 OVERSIGHT PANEL

DISCUSSION ITEM

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

Meeting Date: April 1, 2019

From: Suresh Prasad
Administrative Services
Manager/Chief Financial
Officer

Prepared By: Arlene Tavani

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

SUMMARY: Documents for your review will be provided at the April 1, 2019 Panel meeting.

ORDINANCE NO. 152 OVERSIGHT PANEL

DISCUSSION ITEM

5. DISCUSS PERFORMANCE OF DISTRICT USER FEE, TO DATE

Meeting Date: April 1, 2019

From: Suresh Prasad
Administrative Services
Manager/Chief Financial
Officer

Prepared By: Arlene Tavani

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

SUMMARY: Documents for your review will be provided at the April 1, 2019 Panel meeting.

ITEM: DISCUSSION ITEM

**6. DISCUSS ACTIONS RELATED TO RULE 19.8 – DEVELOPMENT OF THE
FEASIBILITY STUDY ON PUBLIC OWNERSHIP OF THE MONTEREY
PENINSULA WATER SYSTEM**

Meeting Date: April 1, 2019 **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: In December 2018, the District Board was informed of the Citizens Oversight Panel’s discussion at its November 15, 2018 committee meeting as it relates to the use of the Water Supply Charge on Measure J related costs. The Board decided to get an outside legal opinion to determine if the Water Supply Charge could, in fact, legally be used for such purposes. This was done in anticipation of the potential need to look at ALL District revenues for the unexpected and potentially substantial costs associated with the voters’ approval of Measure J.

Attached as **Exhibit 6-A** is an opinion by the law firm of Colantuono, Highsmith, Whatley PC, the firm that assisted with the establishment of the Water Supply Charge.

EXHIBIT

6-A Opinion of Colantuono, Highsmith, Whatley PC


420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091
Main: (530) 432-7357
FAX: (530) 432-7356

COLANTUONO
HIGHSMITH
WHATLEY, PC

Michael G. Colantuono
(530) 432-7359
MColantuono@chwlaw.us

MEMORANDUM

TO: Dave Stoldt, General Manager
Monterey Peninsula Water
Management District

FROM: Michael G. Colantuono, Esq. 
Ryan A. Reed, Esq.

CC: Dave Laredo, General Counsel

RE: Use of Ordinance 152 Water Supply Charge Proceeds to Implement
Measure J

FILE NO: 43025.0002

DATE: February 6, 2019

Question Presented: May proceeds of the District's Water Supply Charge imposed under Ordinance 152 be used for costs to study the feasibility of acquiring, and to acquire, assets of California American Water Company (Cal. Am.) pursuant to Measure J.

Short Answer: Yes.

Discussion: The District operates under the Monterey Peninsula Water Management District Law (Chapter 527 of the Statutes of 1977, West's Ann. Cal. Water Code App., § 118-1, et seq.). The District has broad statutory authority to provide water to customers within its boundaries:

The district shall have the power as limited in this law to do any and every lawful act necessary in order that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within

EXHIBIT 6-A

Dave Stoldt, General Manager
Monterey Peninsula Water Management District
February 6, 2019
Page 2

the district, including, but not limited to, irrigation, domestic, fire protection, municipal, commercial, industrial, recreational, and all other beneficial uses and purposes.

(West's Ann. Cal. Water Code App., § 118-325). Before 2012, the District was funded by a user fee Cal. Am. collected from its customers for the District. The California Public Utilities Commission then ordered Cal. Am. to suspend collection of fee, forcing the District to impose a new fee to fund its services. The District implemented a direct user charge, in accordance with requirements of Proposition 218, by adopting Ordinance No. 152. Under the Ordinance, fees collected can only be used:

[T]o fund District water supply activities, including capital acquisition and operational costs for Aquifer Storage and Recovery (ASR) and Groundwater Replenishment (GWR) 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, geological, 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."

(District Ord. No. 152, § 3). In November 2018, District voters approved Measure J. The initiative requires the District to study the feasibility of acquiring Cal. Am.'s assets on the Monterey Peninsula used for water production, storage and delivery and to obtain the assets through negotiation or eminent domain if it is feasible to do so. This

EXHIBIT 6-A

Dave Stoldt, General Manager
Monterey Peninsula Water Management District
February 6, 2019
Page 3

raises the question whether such costs can be funded by the water supply charge imposed by Ordinance No. 152.

The Plain Language. “The statute’s plain language controls unless its words are ambiguous.” (*People v. Maultsby* (2012) 53 Cal.4th 296, 299). The Ordinance’s plain language supports the use of the water supply charge to pay for the cost of Measure J implementation provided those actions help the District ensure sufficient water supply to its territory. Measure J requires the District first to assess the feasibility of the acquiring Cal. Am.’s assets. We conclude this study can be funded by the water supply charge as “studies related to project(s) necessary to ensure sufficient water is available.” (District Ord. No. 152, § 3).

If acquisition is feasible, Measure J requires the District to acquire the assets by negotiations or eminent domain. The plain language of the Ordinance, again, supports the use of the water supply charge to do so. The Ordinance uses broad language, stating the supply charge is meant to fund “water supply services.” (District Ord. No. 152, Finding 18). More specifically, “proceeds of this annual water supply charge may also be expended to ensure sufficient water is available for present beneficial use or uses.” (District Ord. No. 152, § 3).

Further, the Ordinance allows the District to spend the water supply charge on both direct and indirect costs. According to the Technical Memorandum which served as the Proposition 218 cost of service study for the Ordinance, the supply charge should reflect the actual cost of providing service. (Bartle Wells Associates, Technical Memorandum, April 12, 2012, p. 3). The revenue requirement described in the Technical Memorandum includes both direct costs, including purchase price of assets, and indirect costs such as “staff salaries, legal and professional services, and utilities.” (*Ibid.*). These costs are necessary components of the District’s revenue requirement and are, therefore, covered by the water supply charge.

Statutory Intent. The Ordinance's plain language supports the use of the water supply charge to fund Measure J activities. Therefore, there should be no need to consider other indications of the intent of the Ordinance. If there were any ambiguity as to what "water supply" services are within its scope, legislative history assists our conclusion, too. If legislative enactments is ambiguous, courts "look to extrinsic sources, such as the ostensible objectives to be achieved by the statute, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction and the statutory scheme of which the statute is a part." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1105.)

"The District's function is to manage water resources on a watershed basis **to protect supply for current and future use.**" (Bartle Wells Associates, Technical Memorandum, at p. 23). To fulfil that function, the District is authorized to "do any and every lawful act necessary in order that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within the district." (West's Ann. Cal. Water Code App., § 118-325). The District has eminent domain authority as "necessary for carrying out the powers and purposes of the district." (West's Ann. Cal. Water Code App., § 118-397). The Legislature granted the District broad authority to ensure water is available for its residents, businesses and landowners.

The Ordinance uses substantially the same language as the District's statutory authority to describe permissible uses of the water supply charge. Each allows the District to ensure that sufficient water is available for present beneficial use by District customers. The Ordinance's "[l]anguage ... must be construed in the context of that instrument as a whole, and in the circumstances of that case." (*Alameda County Flood Control & Water Conservation Dist. v. Department of Water Resources* (2013) 213 Cal.App.4th 1163, 1179) (quoting *Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co.* (1993) 5 Cal.4th 854, 867). Reading these two provisions demonstrates the District intended the water supply charge to fund all activities it may lawfully undertake,

including using eminent domain to acquire necessary property. Measure J actions are within the District's authority, because they help ensure sufficient water supply.

Conclusion: The District can use the water supply charge to study the feasibility of acquiring Cal. Am.'s assets that serve the District, and to acquire those assets by negotiation or eminent domain.

Thank you for the opportunity to assist. If there is more we can do to be helpful, please let us know.

EXHIBIT 11-C



Monterey Peninsula Water Management District *Indicative Terms and Conditions as of November 28, 2012*

By accepting this term sheet the Monterey Peninsula Water Management District (the “District”) agrees that (i) it shall use the information contained herein solely for the purpose of evaluating a possible transaction between the District and Rabobank, N.A. (the “Bank”) and for no other purpose and (ii) the District and its representatives will keep confidential and not disclose any of such information to any third parties other than its financial advisor and legal counsel, including the fact that the District is considering a possible transaction with the Bank. *This proposal is not a commitment. The terms and conditions contained in this proposal are not intended to be exhaustive or all-inclusive, and the final legal documentation may include additional or different terms and conditions required by the Bank that are not included herein.*

District:	Monterey Peninsula Water Management District
Bank:	Rabobank, N.A.
Amount:	\$4,000,000.
Use and Investment of Proceeds:	Bond proceeds will be used to [finance infrastructure owned by the District, reimburse the District for costs incurred in connection with infrastructure, pay off an existing line of credit, fund the Debt Service Reserve Fund, and fund costs of issuance]. District will invest and apply the proceeds only as permitted by applicable law.
Interest Rate:	3.6% fixed (taxable).
Amortization/Maturity:	30 year amortization/10 year maturity.
Prepayment Penalty:	None.
Reserve Fund:	The District shall maintain a Debt Service Reserve Fund equal to one year’s debt service (principal and interest, estimated at \$220,000), that shall be held as additional security for the Bank in a Bank controlled account.
Nature of Obligation and Repayment:	Debt will be secured by a pledge of the District’s water supply charge. Principal to be paid semi-annually.
Bank Fees:	Estimated \$20,000.
Legal Fees/Expenses:	Estimated \$20,000.
Bank Counsel:	Fulbright & Jaworski L.L.P.
Opinion of District Counsel:	The Bank shall receive an opinion of counsel to the District acceptable to the Bank, including among other things an opinion that the debt and the



instrument under which the debt is issued have been duly and validly authorized by the District and constitute legal valid and binding obligations of the District, enforceable in accordance with their terms.

Documentation:	Standard documentation for a revenue bond transaction of this kind.
Conditions Precedent:	<p>Any terms and conditions the Bank may reasonably require for transactions of this nature, including the following:</p> <ul style="list-style-type: none">• District must comply with a rate covenant of 1.25x maximum annual debt service;• District may issue additional debt subject to an additional debt test of 1.25x maximum annual debt service on all parity debt;• Receipt of audited financial statements;• Applicable permits, if any.
Credit Approval and Offer Expiration:	<p>This term sheet is an indication of interest only and is not a commitment to lend. Any offer by the Bank in connection with the proposed transaction will be subject to the Bank's satisfactory completion of its due diligence review of the District and final credit approval by the Bank.</p> <p>The Bank anticipates, but cannot guaranty, being able to provide its credit decision within 4 weeks of being given the mandate to purchase the warrants. The terms described herein expire Dec. 15, 2012 unless extended by the Bank.</p>
Absence of Fiduciary Relationship:	<p>The District acknowledges that the transactions described in this document are arms'-length commercial transactions and that the Bank is acting as principal and in its best interests. The District is relying on its own experts, lawyers and advisors to determine whether the transactions described in this document are in its best interests. The District agrees that the Bank will act under this document as an independent contractor and that nothing in this document, the nature of the Bank's services or in any prior relationship will be deemed to create an advisory, fiduciary or agency relationship between the Bank, on the one hand, and the District, on the other hand. In addition, the Bank may employ the services of its affiliates in providing certain services in connection with the transactions described in this document and may exchange with such affiliates information concerning the District that may be the subject of the transactions described in this term sheet.</p> <p>Please note that the Bank and its affiliates do not provide tax, accounting or legal advice. The Bank and its advisors are not serving as a municipal advisor to the District.</p>



Anti-tying Disclosure:

The extension of commercial loans or other products or services to the District by the Bank or any of its subsidiaries will not be conditioned on the District's taking other products or services offered by the Bank or any of its subsidiaries or affiliates, unless such a condition is permitted under an exception to the anti-tying provisions of the U.S. Bank Holding Company Act of 1956, as amended, and the regulations issued by the Federal Reserve Board implementing the anti-tying rules (collectively, the "Anti-tying Rules"). The Bank will not vary the price or other terms of any product or service offered by the Bank or its subsidiaries on the condition that the District purchase another product or service from the Bank or any affiliate, unless the Bank is authorized to do so under an exception to the Anti-tying Rules. The Bank will not require the District to provide property or services to the Bank or any affiliate as a condition to the extension of a commercial loan to the District by the Bank or any of its subsidiaries, unless such a requirement is reasonably required to protect the safety and soundness of the loan. The Bank will not require the District to refrain from doing business with a competitor of the Bank or any of its affiliates as a condition to receiving a commercial loan from the Bank or any of its subsidiaries, unless the requirement is reasonably designed to ensure the soundness of the loan.

Bank Public Finance
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Acknowledged and
Consented:

By: _____
Authorized Officer
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

This document has been prepared by the Bank for information purposes only. This document is an indicative summary of the terms and conditions of the transaction described herein and may be amended, superseded or replaced by subsequent summaries. The final terms and conditions of the transaction will be set out in full in the applicable binding transaction document(s).

This document shall not constitute a commitment to participate in the transaction described herein, which shall be subject to the Bank's internal approvals. No transaction or services related thereto is contemplated without the Bank's subsequent formal agreement. The Bank is acting solely as principal



and not as advisor or fiduciary. Accordingly you must independently determine, with your own advisors, the appropriateness for you of the transaction before investing or transacting. The Bank accepts no liability whatsoever for any direct, consequential or other losses arising from the use of this document or reliance on the information contained herein.

The Bank does not guarantee the accuracy or completeness of information which is contained in this document and which is stated to have been obtained from or is based upon trade and statistical services or other third party sources. Any data on past performance, modeling or back-testing contained herein is no indication as to future performance. No representation is made as to the reasonableness of the assumptions made within or the accuracy or completeness of any modeling or back-testing. All opinions and estimates are given as of the date hereof and are subject to change. The information in this document is not intended to predict actual results and no assurances are given with respect thereto.

The Bank, its affiliates and the individuals associated therewith may (in various capacities) participate in transactions identical or similar to those described herein.

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THIS DOCUMENT DOES NOT DISCLOSE ALL THE RISKS AND OTHER SIGNIFICANT ISSUES RELATED TO THE POTENTIAL TRANSACTION. PRIOR TO TRANSACTING, POTENTIAL PARTICIPANTS SHOULD ENSURE THAT THEY FULLY UNDERSTAND THE TERMS OF THE TRANSACTION AND ANY APPLICABLE RISKS.

From: [Joel Pablo](#)
To: [John Tilley](#)
Subject: RE: Ordinance 152 Reserves, the Water Supply Charge and The Mechanics Bank Loan
Date: Saturday, January 15, 2022 8:22:00 AM

Thank you, John! This has been included for the record as Public Comment Received.

From: John Tilley <the5amswim@yahoo.com>
Sent: Thursday, January 13, 2022 6:42 PM
To: Bill Peake <bpeake@cityofpacificgrove.org>; Dave Stoldt <stoldt@comcast.net>; Dave Stoldt <dstoldt@mpwmd.net>; David Laredo <dave@laredolaw.net>; Jason Campbell <camprain@sbcglobal.net>; John Tilley <john.tilley@pinnacle.bank>; Kevan Urquhart <urquhartk@aol.com>; Marli Melton <marlimelton@gmail.com>; Melodie Chrislock <mwchrislock@redshift.com>; Mike Rachel <inspectormike1021@gmail.com>; Sandra Kandell <skandell@cityofpacificgrove.org>; Scott Dick <scott@mcar.com>; Suresh Prasad <suresh@mpwmd.net>; Susan Schiavone <S.Schiavone@sbcglobal.net>; Joel Pablo <Joel@mpwmd.net>
Subject: Fw: Ordinance 152 Reserves, the Water Supply Charge and The Mechanics Bank Loan

Fellow Members of the 152 Committee, District Employees and Mr. Laredo,

Wishing everyone a healthy start to 2022.

When I saw the agenda for tomorrow's meeting I took a look at the 152 panel charge on the District's website and found these consecutive sentences:

"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 at its regular September meeting."

What is on the agenda; the annual report written by the District itself, past the required timing, asking for a majority vote and not expressing the various views of committee members, should not be acceptable to the committee members. This annual report is not acceptable to me.

Providing the 152 Committee editing of this report is necessary.

Thank you and I look forward to our meeting tomorrow.

John Tilley

----- Forwarded Message -----

From: John Tilley <the5amswim@yahoo.com>
To: [alvinedwards420@gmail.com](#) <[alvinedwards420@gmail.com](#)>; [georgetriley@gmail.com](#) <[georgetriley@gmail.com](#)>; [water@mollyevans.org](#) <[water@mollyevans.org](#)>; [jcbarchfaia@att.net](#) <[jcbarchfaia@att.net](#)>; [gghwd1000@gmail.com](#) <[gghwd1000@gmail.com](#)>; [dpotter@ci.carmel.ca.us](#) <[dpotter@ci.carmel.ca.us](#)>; [district5@co.monterey.ca.us](#) <[district5@co.monterey.ca.us](#)>; David <[dstoldt@mpwmd.net](#)>; Arlene Tavani <[arlene@mpwmd.net](#)>
Sent: Friday, June 5, 2020, 02:55:59 PM PDT
Subject: Ordinance 152 Reserves, the Water Supply Charge and The Mechanics Bank Loan

June 5, 2020

The Board Members of the Monterey Peninsula Water District

Mr. David Stoldt, General Manager of the Monterey Peninsula Water District

Dear Board Members and Mr. Stoldt,

I am writing you as a member of the Ordinance 152 Citizen's Oversight Panel to express my profound concern regarding the Mechanic's Bank loan maturing in 2023 and any attempt to shift the reserves built via collection of the Water Supply Charge to purposes clearly not the intent of Ordinance 152.

Ordinance 152 was adopted on June 27, 2012 with board members Brower, Markey, Byrne, Lewis and Pendergrass voting for its approval. The Ordinance was passed in response to a brief suspension of the User Fee and the expressed intent to "replace and augment" that funding stream.

Ordinance 152 clearly states revenues are to be used to fund "actual costs to provide water supply services" and "Supply charge proceeds will be expended only to fund water supply services and for no other purpose". Section Ten establishes a date of December 31, 2017 as a cut-off for funded projects to be "identified and determined by the Board of Directors to have been underway". As a point of reference, Measure J was passed in November of 2018.

Furthermore, the General Manager's report from April 16, 2012 (attached) stated that these funds are clearly intended to support the work needed to fulfill the promise of the supply portfolio including Aquifer Storage and Recovery, Pure Water Monterey Phase One and the CalAm desalination plant. The full meeting package is found [here](#). Item 12 D (attached) states "*Hence, the fees are being raised for water supply activities. Section 3 of the Ordinance specifically limits the purposes to the GWR and ASR projects and purposes that confer benefit and/or service to existing main Cal-Am water users 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*".

On December 11th of 2012 the MPWMD Board passed a resolution approved by members Byrne, Lehman, Lewis, Markey and Pendergrass to "approve obtaining a loan from Rabobank . . . for reimbursement of the Aquifer Storage Recovery costs". The need for the loan was premised on "the District has not been able to collect the User Fee". In summary, the User Fee temporarily went away, the Water Supply Charge was not yet providing the revenue needed and expenses for Aquifer Storage and Recovery (ASR) were mounting. The Rabobank loan was obtained and used to build-out ASR while the Water Supply Charge was expected to be the source or repayment of the loan.

The Rabobank term sheet (attached) emphasizes the direct connection between the loan, the Water Supply Charge and ASR. Here are two pertinent excerpts from the Rabobank term sheet showing the use of funds was ASR and repayment would come from the WSC:

Use and Investment of Proceeds: Bond proceeds will be used to finance infrastructure owned by the District, reimburse the District for costs incurred in connection with infrastructure, pay off an existing line of credit, fund the Debt Service Reserve Fund, and fund cost of issuance.

Nature of Obligation and Repayment: Debt will be secured by a pledge of the District's water supply charge.

As a member of the Ordinance 152 Citizen's Oversight Panel I ask that the purpose and intent of Ordinance 152 be honored. There is currently a three million dollar cash reserve in the Ordinance 152 fund and a 3 million dollar debt to be paid. The reserve was built via collection of the Water Supply Charge. The loan was taken to build the infrastructure needed to supply water. It is time for the reserves collected to be used to pay for the infrastructure work already accomplished. While staff secured a legal opinion (attached) promoting the idea that funds from Ordinance 152 *could* be repurposed, doing so raises serious ethical, legal and financial risks for the District.

It has always been the expectation of the public and the ratepayers that the District sunset the Water Supply Charge and not double collect fees. I urge the Board to commit the reserves to paying off the Rabobank loan as intended and refrain from the unethical temptation of misusing those reserves to pay for Measure J. The Water Supply Charge was created to pay for building the Water Supply Portfolio and should be used solely for that purpose as it was intended. Now is the time to do so as there are no pre-payment penalties on the Rabobank/Mechanics Bank loan.

I urge the board to act responsibly and transparently. Diverting Water Supply Charge funds outside of the intended purpose is not only of questionable ethical standards, but clearly puts the District at serious legal and financial risks.

Respectfully yours,

John Tilley

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