Submitted by M. Baer for distribution at 3/18/19 Board meeting
Item 19

Commentary by Doug Wilhelm and Michael Baer

On February 21st at the Monterey Peninsula Water Management District's monthly board meeting David Stoldt, the general manager, reported that the District's eminent domain (ED) consultant recommended that in order to make victory likely, the District would have to show early savings to the ratepayers in acquiring Cal Am. The Herald ran a lengthy feature article about the topic on March 2nd. We question this finding.

During the two years leading up to the November 2018 election, Public Water Now hosted numerous forums to educate the public around the complex circumstances surrounding our water supply issues. Several of the forums were presented by community leaders from places that had successfully acquired their water company from corporate for-profit utilities. Missoula, Montana, and Ojai, Felton, and Montara from California came to tell their stories. Missoula, Ojai and Felton each came back a second time. Missoula went through the entire legal process, whereas the California communities all reached satisfactory settlement agreements.

As presented at the forums, ED is a two-step process. Mr. Stoldt confirmed this explanation during the District's "listening tour" in January 2019. "Tennessee" Joe Connor is a corporate lawyer in ED cases who consults for Cal Am. He corroborates the same point.

Step One is convened before a judge and examines the necessity and public benefit for the take-over. During this phase, governance and water delivery competencies will be compared and analyzed; the advantages of public financing will be examined. The long list of anecdotal complaints about bill spikes, and the customer service nightmares provided by non-local representatives can be placed before the judge.

Phase One is very winnable if, and only if, the water district prepares a solid plan to run the water company. Note: Claremont lost its ED case in Phase One because of its cavalier approach to this last point which could be summarized as, "We are a City. We pick up garbage and we manage sewer. Don't worry, we can manage water too." The judge was not impressed. The case ended then and there. Claremont had to pay legal bills for the defendant as well as for itself.

We expect the District to be far more diligent than Claremont was in creating a competent water service plan. Given the excellence of staff at MPWMD, we anticipate a thorough and competent service plan presented to replace Cal Am.

If the judge finds in favor of the District on Phase One, then Phase Two will be by jury trial to determine the fair market value and sales price.

Consider this: The judge from Phase One will be looking at the value of the company as a range between the buyer's and seller's assertions about the company, for it is the jury in Phase Two that will determine the actual final price. If the District can demonstrate a reasonable valuation that won't raise costs to the ratepayers, then cost should not be a barrier to success in Phase One.

In Phase Two, Cal Am has a huge problem. It is called "discovery." Cal Am's accounting and maintenance is generally proprietary; the company is not required to reveal this information now, nor during the feasibility study, nor during Phase One of ED proceedings. They have no incentive to do so. Yet using discovery during Phase Two gives the District's lawyers the opportunity to substantially review Cal Am's books. They can examine any excess charges by Cal Am management, deferred maintenance records as well as the physical infrastructure of the pipes and the pumps.

Obviously, we would celebrate early savings in the buy-out as a boon for all ratepayers. The District can calculate the price at which those savings occur but determining the actual cost of acquisition will not be resolved until the very end of the process.