

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**

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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](http://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

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**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

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**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

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**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

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**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

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**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

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**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

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**COLANTUONO**  

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**HIGHSMITH**  


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**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.