

This meeting has been noticed according to the Brown Act rules. This agenda was posted on Thursday, April 13, 2023.



**Ordinance No. 152
Oversight Panel
Members:**

*Susan Schiavone
Alison Kerr
Rebecca Lindor
Marli Melton
Melodie Chrislock
Kevan Urquhart
Adam Pinterits
John Tilley*

*Vacant, Mayoral
Appointee*

MPWMD Contacts:

*General Manager,
David J. Stoldt*

*Administrative Services
Manager/CFO
Suresh Prasad*

*Board Clerk,
Joel G. Pablo*

Mission Statement

Sustainably manage and augment the water resources of the Monterey Peninsula to meet the needs of its residents and businesses while protecting, restoring, and enhancing its natural and human environments.

Vision Statement

Model ethical, responsible, and responsive governance in pursuit of our mission.

AGENDA

**Ordinance No. 152 Citizen's Oversight Panel
of the Monterey Peninsula Water Management District**

Wednesday, April 19, 2023 at 11:00 A.M. [PST] | *Virtual Meeting*

Join the meeting at this link:

<https://mpwmd-net.zoom.us/j/88418442579?pwd=RmdVK0pHUdFqZkxHL0EwZTAyUGM0Zz09>

Or access the meeting at: zoom.us

Webinar ID: 884 1844 2579

Meeting password: 04192023

Participate by phone: (669) 900 9128

For detailed instructions on connecting to the Zoom meeting see page 3 of this agenda.

Call to Order / Roll Call

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 the Panel Meeting Minutes from January 31, 2023

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

2. Review of Revenue and Expenditures of Water Supply Charge Related to Water Supply Activities
3. Update on Monterey Peninsula Taxpayers Association (MPTA) Lawsuit
4. Legal Costs to the District on the MPTA Lawsuits
5. Update on Mechanics Bank Loan Refinancing or Pay-Off (*Verbal Report*)

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

6. Water Supply Project Update (*Verbal Report*)
7. Suggest Items to be Placed on a Future Agenda

Adjournment

Board of Director's Goals and Objectives

Are available online at: <https://www.mpwmd.net/who-we-are/mission-vision-goals/bod-goals/>

Accessibility

In accordance with Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), 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. MPWMD will also make a reasonable effort to provide translation services upon request. Please send a description of the requested materials and preferred alternative format or auxiliary aid or service at least 48 hours prior to the scheduled meeting. Requests should be forwarded to: (1) Joel G. Pablo by e-mail at joel@mpwmd.net, or at (831) 658-5652; and (2) Sara Reyes by e-mail at sara@mpwmd.net or at (831) 658-5610.

Provide Public Comment at the Meeting

Attend via Zoom (For detailed instructions, please see "Instructions for Connecting to the Zoom Meeting" below.)

- (a) Computer Audio Connection: Select the "raised hand" icon. When you are called on to speak, you may identify yourself for the record.
- (b) Phone audio connection **with** computer to view meeting: Select the "raised hand" icon. When you are called on to speak, dial *6 to unmute and you may identify yourself for the record.
- (c) Phone audio connection only: Press *9. Wait for the clerk to unmute your phone and you may identify yourself for the record and provide your comment. Press *9 to end the call.

Submission of Public Comment via E-mail

Send comments 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." Staff will forward correspondence received to the Board. Correspondence is not read during public comment portion of the meeting. However, all written public comment received becomes part of the official record of the meeting and placed on the District's website as part of the agenda packet for the meeting.

Submission of Written Public Comment

All documents submitted by the public must have no less than thirteen (10) copies to be received and distributed by the **Clerk** prior to the Meeting. [Applies to only In-Person or Hybrid Committee Meetings]

Document Distribution

In accordance with Government Code §54957.5, any materials of public record relating to an agenda item for a meeting of a legislative body that are provided to a majority of the members less than 72 hours before the meeting will be made available at the District Office, 5 Harris Court, Building G., Monterey, CA, during normal business hours. Materials of public record that are distributed during the meeting shall be made available for public inspection at the meeting if prepared by the Board or a member of its legislative/advisory body, or the next business day after the meeting if prepared by some other person.

Instructions for Connecting to the Zoom Meeting

Note: If you have not used Zoom 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-net.zoom.us/j/88418442579?pwd=RmdVK0pHUDFqZkxHL0EwZTAyUGM0Zz09> or paste the link into your browser.

DETERMINE WHICH DEVICE YOU WILL BE USING (PROCEED WITH ONE OF THE FOLLOWING INSTRUCTIONS)

USING A DESKTOP COMPUTER OR LAPTOP

1. In a web browser, type: <https://www.zoom.us>
2. Hit the enter key
3. At the top right-hand corner, click on "Join a Meeting"
4. Where it says "Meeting ID", type in the Meeting ID# above and click "Join Meeting"
5. Your computer will begin downloading the Zoom application. Once downloaded, click "Run" and the application should automatically pop up on your computer. (If you are having trouble downloading, alternatively you can connect through a web browser – the same steps below will apply).
6. You will then be asked to input your name. It is imperative that you put in your first and last name, as participants and attendees should be able to easily identify who is communicating during the meeting.
7. From there, you will be asked to choose either ONE of two audio options: Phone Call or Computer Audio:

COMPUTER AUDIO

1. If you have built in computer audio settings or external video settings – please click "Test Speaker and Microphone".
2. The client will first ask "Do you hear a ringtone?" •If no, please select "Join Audio by Phone".
•If yes, proceed with the next question:
3. The client will then ask "Speak and pause, do you hear a replay?" •If no, please select "Join Audio by Phone"
•If yes, please proceed by clicking "Join with Computer Audio"

PHONE CALL

1. If you do not have built in computer audio settings or external video settings – please click "Phone Call"
2. Dial one of the numbers listed below using a phone. Select a phone number based on your current location for better overall call quality.

+1 669-900-9128 (San Jose, CA)

+1 253-215-8782 (Houston, TX)

+1 346-248-7799 (Chicago, IL)

+1 301-715-8592 (New York, NY)

+1 312-626-6799 (Seattle, WA)

+1 646-558-8656 (Maryland)

3. Once connected, it will ask you to enter the Webinar ID No. and press the pound key
4. It will then ask you to enter your participant ID number and press the pound key.
5. You are now connected to the meeting.

USING AN APPLE/ANDROID MOBILE DEVICE OR SMART PHONE

1. Download the Zoom application through the Apple Store or Google Play Store (the application is free).
2. Once download is complete, open the Zoom app.

3. Tap "Join a Meeting"
4. Enter the Meeting ID number
5. Enter your name. It is imperative that you put in your first and last name, as participants and attendees should be able to easily identify who is communicating during the meeting.
6. Tap "Join Meeting"
7. Tap "Join Audio" on the bottom left hand corner of your device
8. You may select either ONE of two options: "Call via Device Audio" or "Dial in"

DIAL IN

1. If you select "Dial in", you will be prompted to select a toll-free number to call into.
2. You may select any of the numbers listed below:

+1 669-900-9128 (San Jose, CA)

+1 253-215-8782 (Houston, TX)

+1 346-248-7799 (Chicago, IL)

+1 301-715-8592 (New York, NY)

+1 312-626-6799 (Seattle, WA)

+1 646-558-8656 (Maryland)

3. The phone will automatically dial the number, and input the Webinar Meeting ID No. and your Password.
4. Do not hang up the call, and return to the Zoom app
5. You are now connected to the meeting.

Refer to the Meeting Rules of the Monterey Peninsula Water Management District (Revised August 2022) at <https://www.mpwmd.net/who-we-are/board-of-directors/meeting-rules-of-the-mpwmd/>

ORDINANCE NO. 152 CITIZEN'S OVERSIGHT PANEL

ITEM: ACTION ITEM

**1. CONSIDER ADOPTION OF THE PANEL MEETING MINUTES FROM
JANAURY 31, 2023**

Meeting Date: April 19, 2023

**From: David J. Stoldt
General Manager**

Prepared By: Joel G. Pablo

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

SUMMARY: The draft meeting minutes of the Ordinance No. 152 Citizen's Oversight Panel for January 31, 2023 is attached as **Exhibit 1-A**. The Panel will review, provided suggested edits, and consider approval of the draft meeting minutes.

RECOMMENDATION: Consider adoption of the January 31, 2023 Panel meeting minutes as presented or provide editorial changes, *if any*.

EXHIBIT

1-A Ordinance No. 152 Citizen's Oversight Panel: Draft Meeting Minutes for January 31, 2023



EXHIBIT 1-A

Draft Minutes

**Ordinance No. 152 Citizen's Oversight Panel of the
Monterey Peninsula Water Management District
January 31, 2023**

*As a precaution to protect public health and safety, and pursuant to provisions of AB 361 (Rivas),
the meeting was conducted via Zoom Video/Teleconference.*

Call to Order David J. Stoldt, General Manager / Chair to the Panel called the meeting to order
at 1:00 p.m.

Roll Call

Panel Members Present:

Susan Schiavone
Alison Kerr
Rebecca Lindor (*Joined at 1:02 p.m.*)
Marli Melton
Melodie Chrislock
Kevan Urquhart
Adam Pinterits
John Tilley
Vacant, Mayoral Appointee

MPWMD Staff Members Present:

David J. Stoldt, General Manager (*Left at 2:00 p.m.*)
Suresh Prasad, Administrative Services Manager/CFO
Joel G. Pablo, Board Clerk

District Counsel Present:

David C. Laredo and Fran Farina with De Lay and
Laredo

Panel Members Absent:

None

Comments from the Public:

Chair Stoldt opened public comment; *No comments were directed to the Panel.*

[Rebecca Lindor (joined at 1:02 p.m.) and introduced herself to the Panel.]

Action Items

1. Consider Adoption of the Panel Meeting Minutes from October 19, 2022

Chair Stoldt introduced the matter and opened public comment. *No comments were directed
to the Panel.*

A motion was offered by Urquhart with a second by Schiavone to approve the panel meeting
minutes from October 19, 2022. The motion passed on a roll-call vote of 7-Ayes (Tilley,
Pinterits, Urquhart, Chrislock, Melton, Lindor and Schiavone), 0-Noes, 1-Abstain (Kerr).

2. Review Draft 2022 Annual Report and Authorize Release to the MPWMD Board of Directors

David J. Stoldt introduced the matter. Melton shared her appreciation that the draft annual report includes both majority and minority opinion. She questioned if the minority stance on sunsetting the Water Supply Charge as found in the draft is accurate and kindly requested for Tilley to elaborate. Tilley responded stating at the time the charge was presented before the Board and enacted he understood the Water Supply Charge should have been discontinued when the User Fee returned. He believes the collection of the charge has reached an expiration date and the funds should have been directed to paying off the debt. Pinterits concurred with Tilley’s comments. Stoldt explained the rationale for the continued collection of the user fee and water supply charge. The Panel discussed the idea of including the number of individuals in support of the majority vs. minority opinion. After much deliberation, the Panel decided not to include the majority / minority ratio into the report.

Stoldt briefly summarized Panel discussion and consensus on the report:

- a. Not Include the Majority / Minority Ratio
- b. Complete blank fields
- c. Attach the Water Supply Charge Availability Analysis and Water Supply Charge Reports

Chair Stoldt opened public comment. *No comments were directed to the Panel.*

A motion was offered by Tilley with a second by Schiavone to approve submittal of the 2022 Annual Report to the Board of Directors. The motion passed on a roll-call vote of 7-Ayes (Tilley, Pinterits, Urquhart, Chrislock, Melton, Lindor and Schiavone), 0-Noes and 1-Abstain (Kerr).

Discussion Items

3. Review of Revenue and Expenditures of Water Supply Charge Related to Water Supply Activities

Suresh Prasad, Administrative Services Manager/Chief Financial Officer briefly covered Exhibits 3-A through 3-C, answered Panel questions and provided the following highlights:

Exhibit 3-A: Water Supply Charge (WSC) Receipts (Fiscal Year 2022-23)

- a. The District has budgeted \$3.4 million for the fiscal year.
- b. WSC amounts to be collected from property tax bills in the following months:
 - December 2022: ≈ 60%
 - April 2023: ≈ 35%
 - June 2023: ≈ Remainder

Exhibit 3-B: Water Supply Charge Availability Analysis (FY 2022-23)

- a. Briefly covered the unaudited figures to include revenues and expenditures thru November 30, 2022
- b. Explained that the District purchased water from Pure Water Monterey (Monterey One Water) and sold the water to California-American Water.

- c. Thru November 30th of the current fiscal year, the net revenue over expenses is at a deficit of approximately \$1.2 million.

Exhibit 3-C: Water Supply Charge Report – Water Supply Fund

- a. Displayed chart and explained that the revenues collected through the charge does not cover all of the expenses found in the report.

Chair Stoldt opened Public Comment; *No comments were directed to Panel.*

[Chair Stoldt left the meeting at 2:00 p.m.]

4. Update on Monterey Peninsula Taxpayers Association (MPTA) Lawsuits

David C. Laredo, *District Counsel* provided brief background information on the original MPTA lawsuit filed in 2013 and the decision reached by the 6th District Court of Appeal in favor of the District. Laredo commented on two matters of existing litigation MPTA II v. MPMWD (Case No. 21CV003066) and MPTA III v. MPWMD (Case No. 22CV002113). On MPTA II, a hearing was held on December 2022 and Judge Panetta took the case under submission. He noted that a further Case Management Conference has been set for April 4, 2023 and any decision made by Panetta could be appealed by either party.

Chrislock questioned how much has been spent on the MPTA lawsuits. Laredo and Suresh stated that this information can be presented at the next Panel Meeting.

Opened Public Comment; *No comments were directed to the Panel.*

5. Update on Mechanics Bank Loan Refinancing or Pay-Off

Suresh Prasad, Administrative Services Manager/CFO provided an overview of his staff note and noted that he has been in contact with personnel at Mechanics Bank on pay-off and refinancing options. He hopes at the next Panel meeting he can provide more information and options the Bank has for the District. In response to Kerr, Prasad and Laredo explained that the origination of the loan was taken in part to replenish the internal borrowing the District has undertaken as a result of the user fee not being collected and to fund the Aquifer Storage and Recovery projects of the Districts.

Opened Public Comment; *No comments were directed to the Panel.*

Other Items

6. Water Supply Project Update

Item Removed.

7. Suggest Items to be Placed on a Future Agenda

Chrislock: Legal Costs to the District on the MPTA Lawsuits

ADJOURNMENT: There being no further business, Suresh Prasad, Administrative Services Manager/CFO adjourned the meeting at 2:18 p.m.

Joel G. Pablo, Board Clerk to the
MPWMD Ordinance No. 152 Citizen’s Oversight Panel

Approved by the MPWMD Ordinance No. 152 Citizen’s Oversight Panel on April XX, 2023
Received by the MPWMD Board of Director’s on April XX, 2023

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ORDINANCE NO. 152 CITIZEN'S OVERSIGHT PANEL

ITEM: DISCUSSION ITEM

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

Meeting Date: April 19, 2023

**From: Suresh Prasad
Administrative Services Manager/
Chief Financial Officer**

Prepared By: Suresh Prasad

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

SUMMARY: Please review **Exhibit 2-A, 2-B** and **2-C** submitted for discussion at the January 31, 2023, committee meeting.

EXHIBITS

- 2-A** Water Supply Charge Receipts
- 2-B** Water Supply Charge Availability Analysis
- 2-C** Water Supply Charge Report (Water Supply Fund)

EXHIBIT 2-A

Monterey Peninsula Water Management District

Water Supply Charge Receipts

	FY 2022-2023 Original Budget	FY 2022-2023 Unaudited Actuals	FY 2021-2022 Original Budget	FY 2021-2022 Audited Actuals
Water Supply Charge	\$3,400,000	\$2,022,764	\$3,400,000	\$3,393,516
Percentage		59.5%		99.8%

EXHIBIT 2-B

Monterey Peninsula Water Management District

Water Supply Charge Availability Analysis

	thru 02/28/2023			
	FY 2022-2023	FY 2022-2023	FY 2021-2022	FY 2021-2022
	Original Budget	Unaudited Actuals	Original Budget	Audited Actuals
Beginning Fund Balance		\$9,021,117		\$8,469,682
Water Supply Charge	\$3,400,000	\$2,022,764	\$3,400,000	\$3,393,516
Capacity Fee	500,000	229,898	400,000	503,980
PWM Water Sales	12,201,000	9,635,973	9,828,000	9,828,000
Project Reimbursement	2,332,200	1,756,680	1,359,100	529,128
Property Taxes	1,125,000	643,482	1,969,700	2,058,683
User Fees	792,000	639,700	764,000	858,082
Interest	40,000	53,019	70,000	(47,028)
Reclamation Project	20,000	0	20,000	33,896
Other	5,000	5,070	5,000	7,811
Total Revenues	\$20,415,200	\$14,986,586	\$17,815,800	\$17,166,068
Direct Personnel	1,591,504	1,058,372	1,259,704	1,453,523
Direct Supplies & Services*	157,146	91,820	140,316	130,474
Legal	220,000	128,144	220,000	166,590
Project Expenditures [see below]	17,420,450	10,366,607	15,117,100	13,404,055
Project Expenditures-Reimbursements [see below]	792,600	153,976	725,000	362,982
Fixed Asset Purchases	104,700	101,253	126,800	39,472
Contingencies	25,200	0	23,800	0
Debt Service	730,000	49,009	730,000	609,568
Election Expense	90,000	0	0	0
Indirect Labor*	189,196	122,044	189,196	183,066
Indirect Supplies & Services*	319,054	186,422	284,884	264,903
Reserve	371,350	0	1,106,700	0
Total Expenditures	\$22,011,200	\$12,257,647	\$19,923,500	\$16,614,633
Net Revenue Over Expenses**	(\$1,596,000)	\$2,728,939	(\$2,107,700)	\$551,435
Ending Fund Balance	\$0	\$11,750,056		\$9,021,117
Project Expenditures	FY 2022-2023	FY 2022-2023	FY 2021-2022	FY 2021-2022
	Original Budget	Unaudited Actuals	Original Budget	Audited Actuals
PWM Project	\$105,000	\$89,919	\$1,865,000	\$2,169,547
PWM Project - Expansion	\$1,000,000	\$321,580	\$850,000	\$583,200
PWM Project - Operating Reserve	\$1,200,000	\$0	\$1,385,000	\$480,403
PWM Project - Water Purchase	\$12,201,000	\$9,635,967	\$9,695,000	\$9,695,000
ASR Phase I	\$325,600	\$8,695	\$517,200	\$21,749
Reimbursement Projects	\$792,600	\$153,976	\$725,000	\$362,982
Cal-Am Desalination Project	\$30,000	\$0	\$50,000	\$0
ASR Expansion	\$80,000	\$0	\$0	\$0
Other Water Supply Projects - IFIM/GSFlow	\$1,848,000	\$14,355	\$50,000	\$17,586
Local Water Projects	\$157,000	\$37,831	\$157,000	\$0
Measure J/Feasibility Study	\$160,000	\$127,137	\$92,800	\$129,202
Drought Contingency Plan	\$0	\$0	\$0	\$0
Los Padres Long Term Plan	\$84,000	\$47,330	\$339,300	\$214,536
PB Reclamation Project	\$0	\$0	\$0	\$0
Other Project Expenditures	\$229,850	\$83,793	\$115,800	\$92,832
Total Project Expenses	\$18,213,050	\$10,520,583	\$15,842,100	\$13,767,037

*: Indirect costs as percent of Water Supply Charge 14.9% 0.0% 13.9% 13.2%

Recent Activities:

- ASR Chemical Building
- Measure J/Feasibility Study
- PB Reclamation Project Financing
- PWM Reserve Water
- PWM Water Purchase

** Deficit balances are paid from combination of loan, interfund borrowing, line of credit proceeds, or fund balance

Exhibit 2-C
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
Water Supply Charge Report (Water Supply Fund)

	Fiscal Year Ending											Total
	2023*	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	
Revenue												
Water Supply Charge	\$ 2,022,764	\$ 3,393,516	\$ 3,422,117	\$ 3,355,193	\$ 3,410,398	\$ 3,405,008	\$ 3,391,354	\$ 3,382,389	\$ 3,327,701	\$ 3,412,207	\$ 3,400,873	\$ 35,923,520
Expenditures												
Personel:												
Salaries	\$ 744,988	\$ 1,088,157	\$ 1,050,039	\$ 1,034,678	\$ 1,025,894	\$ 918,724	\$ 824,182	\$ 815,048	\$ 790,486	\$ 768,299	\$ 734,454	\$ 9,794,949
Employee Benefits and other	\$ 435,428	\$ 548,432	\$ 489,891	\$ 468,197	\$ 415,047	\$ 367,183	\$ 338,110	\$ 308,289	\$ 295,699	\$ 321,168	\$ 331,552	\$ 4,318,996
Services and Supplies:												
Project expenditures	\$ 884,617	\$ 4,072,036	\$ 5,149,121	\$ 5,995,887	\$ 2,284,777	\$ 1,850,300	\$ 3,595,023	\$ 5,384,999	\$ 3,373,391	\$ 6,465,907	\$ 2,294,196	\$ 41,350,254
Water purchases	\$ 9,635,967	\$ 9,695,000	\$ 6,041,594	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 25,372,561
Operating expenditures	\$ 206,636	\$ 270,583	\$ 290,370	\$ 236,163	\$ 240,055	\$ 154,660	\$ 143,059	\$ 166,695	\$ 344,266	\$ 143,720	\$ 130,241	\$ 2,326,448
Professional fees	\$ 199,750	\$ 291,384	\$ 201,588	\$ 192,081	\$ 313,446	\$ 357,070	\$ 214,106	\$ 378,388	\$ 284,904	\$ 304,978	\$ 363,081	\$ 3,100,776
Capitall outlay	\$ 101,253	\$ 39,472	\$ 12,647	\$ 14,927	\$ 76,477	\$ 64,404	\$ 17,334	\$ 60,530	\$ 38,752	\$ 35,919	\$ 15,944	\$ 477,659
Debt Service:												
Principal	\$ -	\$ 557,353	\$ 96,405	\$ 93,157	\$ 90,175	\$ 86,953	\$ 83,881	\$ 80,508	\$ 78,059	\$ 75,215	\$ 38,368	\$ 1,280,074
Interest and other charges	\$ 49,009	\$ 52,215	\$ 122,731	\$ 125,979	\$ 128,961	\$ 132,183	\$ 137,086	\$ 138,627	\$ 147,150	\$ 143,921	\$ 41,801	\$ 1,219,663
Total Expenditures	\$ 12,257,648	\$ 16,614,632	\$ 13,454,386	\$ 8,161,069	\$ 4,574,832	\$ 3,931,477	\$ 5,352,781	\$ 7,333,084	\$ 5,352,707	\$ 8,259,127	\$ 3,949,637	\$ 89,241,380
Difference [surplus/(deficit)]	\$ (10,234,884)	\$ (13,221,116)	\$ (10,032,269)	\$ (4,805,876)	\$ (1,164,434)	\$ (526,469)	\$ (1,961,427)	\$ (3,950,695)	\$ (2,025,006)	\$ (4,846,920)	\$ (548,764)	\$ (53,317,860)
Other Revenue Sources												
Project reimbursements	\$ 1,756,680	\$ 563,024	\$ 622,842	\$ 1,220,812	\$ 526,867	\$ 5,583,786	\$ 693,848	\$ 429,075	\$ 712,002	\$ 2,093,013	\$ 2,032,924	\$ 16,234,873
PWM Water Sales	\$ 9,635,973	\$ 9,828,000	\$ 5,908,182	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 25,372,155
Grants	\$ -	\$ -	\$ -	\$ -	\$ 200,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 38,342	\$ 238,342
Difference [surplus/(deficit)]	\$ 1,157,769	\$ (2,830,092)	\$ (3,501,245)	\$ (3,585,064)	\$ (437,567)	\$ 5,057,317	\$ (1,267,579)	\$ (3,521,620)	\$ (1,313,004)	\$ (2,753,907)	\$ 1,522,502	\$ (11,472,490)

Source: MPWMD Audited Financial Statement

* 2023 unaudited figures

ITEM: DISCUSSION ITEM

3. UPDATE ON MONTEREY PENINSULA TAXPAYERS ASSOCIATION (MPTA) LAWSUIT

Meeting Date: April 19, 2023 **Budgeted:** N/A

From: David J. Stoldt **Program/**
General Manager **Line Item No.:** N/A

Prepared By: David J. Stoldt **Cost Estimate:**

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

SUMMARY: Previously, the District’s Board Clerk distributed to you the “Order Granting Petition for Writ of Mandate and Request for Declaratory Relief” dated March 3, 2023 (the judge’s decision) in the Monterey Peninsula Taxpayers Association (MPTA) lawsuit over the District’s Water Supply Charge.

Attached you find the District’s “Memorandum in Support of Motion to Vacate Judgement and for a new Trial.” This is the only follow-up action to date and is available to the Committee for discussion at its meeting.

EXHIBIT

3-A Memorandum in Support of Motion

EXHIBIT 3-A

1 MICHAEL G. COLANTUONO, State Bar No. 143551
MColantuono@chwlaw.us
2 MATTHEW C. SLENTZ, State Bar No. 285143
MSlantz@chwlaw.us
3 VERNETRA L. GAVIN, State Bar No. 343574
VGavin@chwlaw.us
4 COLANTUONO, HIGHSMITH & WHATLEY, PC
670 West Napa Street, Suite F
5 Sonoma, California 95476
Telephone: (213) 542-5700
6 Facsimile: (213) 542-5710

**Exempt from Filing Fees
Government Code § 6103**

7 Attorneys for Respondent and Defendant
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

8
9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MONTEREY**

Colantuono, Highsmith & Whatley, PC
670 WEST NAPA STREET, SUITE F
SONOMA, CALIFORNIA 95476

12
13 MONTEREY PENINSULA TAXPAYERS'
ASSOCIATION, INC., a California nonprofit
14 corporation; and RICHARDS J. HEUER III, an
individual,

15 **Petitioners and Plaintiffs,**

16 v.

17 THE MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT, a California
18 public agency; and DOES 1 through 10,

19 **Respondents and Defendants.**

CASE NO. 21 CV 003066
Unlimited Jurisdiction

(Case assigned to Hon. Carrie M. Panetta)
Dept 14

**RESPONDENT AND DEFENDANT
MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT'S
MEMORANDUM IN SUPPORT OF
MOTION TO VACATE JUDGEMENT
AND FOR A NEW TRIAL
(CODE CIV. PROC., §§ 657, 663)**

**DECISION REQUIRED BY MAY 29,
2023**

Hearing Date: TBD
Time: TBD
Dept.: 14

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4 **Other Authorities**

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1 **I. INTRODUCTION**

2 Respondent Monterey Peninsula Water Management District (“District”) requests the Court
3 grant a new trial or, alternatively, vacate its current order and enter a new order consistent with this
4 motion. The District is aware such motions impose on the Court’s resources, but these requests are
5 justified by the high stakes here — a reliable water supply for the Monterey Peninsula and the
6 District’s ability to implement the will of voters in adopting Measure J — and the need to assure the
7 public that the District, its counsel and the Court have addressed every facet of this case. A new trial
8 is warranted to consider the District’s obligation, consistent with an order of the Public Utilities
9 Commission, to apply the User Fee to fund mitigation and conservation activities making those
10 funds “unavailable” to replace the Water Supply Charge. Additionally, the Order does not protect
11 Mechanics Bank’s secured interest in Water Supply Charge revenue, and thus unconstitutionally
12 impairs the contract rights of an absent, indispensable party.¹ A new trial is merited to address these
13 issues or, at the least, the Court’s Order should be modified to avoid these infirmities.

14 Motions for a new trial must be decided quickly, and are entitled to calendar preference.
15 (Code Civ. Proc., § 660, subd. (b).) Based on Petitioner Monterey Peninsula Taxpayers Association’s
16 (“MPTA”) Notice of Entry of Judgment on March 15, 2023, and the District’s March 17, 2023
17 Notice of Intent to move for either a new trial or new judgement, these deadlines apply:

- 18 • **March 27, 2023** — this supporting memorandum due;
- 19 • **April 6, 2023** — MPTA’s opposition brief due;
- 20 • **April 11, 2023** — District’s reply brief due; and
- 21 • **May 29, 2023** — Final day for the Court to hear and determine the District’s motion
22 before jurisdiction is lost and the motion is deemed denied. As this is Memorial Day, the
23 Court may wish to target May 26th for decision.
- 24 • **June 8, 2023** — If the Court grants new trial, it must also file a “specification of reasons”
25 within 10 days. (Code Civ. Proc., § 657.) If the new trial order issues May 26th, this will
26 be due June 5th.

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¹Rabobank merged with Mechanics Bank in 2019, and Mechanics Bank became the successor-in-interest to the District's loan agreement with Rabobank.

1 **II. PROCEDURAL REQUIREMENTS FOR POST-TRIAL MOTIONS**

2 **A. Motions for New Trial and to Vacate Judgment May Raise New Arguments**

3 **Motion for new trial** (Code Civ. Proc., § 657). This new trial motion relies on two statutory
4 bases: the decision is against law and an error in law occurred. (Code Civ. Proc., § 657, subs. (6) &
5 (7).) The District asserts a new trial is appropriate due to legal error which affected the outcome of
6 trial. (*Collins v. Sutter Memorial Hospital* (2011) 196 Cal.App.4th 1, 17–18; see *Bristow v. Ferguson*
7 (1981) 121 Cal.App.3d 823, 826 [new trial for legal error].) The issues here are legal claims subject
8 to section 657, subdivisions (6) and (7).² The District may raise new legal issues on a motion for new
9 trial. (*Hoffman-Haag v. Transamerica Insurance Co.* (1991) 1 Cal.App.4th 10, 15 (“*Transamerica*”)
10 [new trial motion alleging decision is “against law” permits new legal theories].)

11 **Motion to vacate judgment** (Code Civ. Proc., § 663). A judgment may be vacated when a
12 court draws incorrect conclusions of law or renders an erroneous judgment on uncontroverted
13 evidence. (*Simac Design, Inc. v. Alciati* (1979) 92 Cal.App.3d 146, 153.) No facts are disputed here
14 — only legal conclusions to be drawn from undisputed evidence. The Court may vacate a judgment
15 inconsistent with, or not supported by, the facts and, if so, it must correct its decision. (Code Civ.
16 Proc., § 663, subd. (1).) An order vacating judgment without also directing entry of a new judgment
17 is void. (*Ramirez v. Moran* (1988) 201 Cal.App.3d 431, 435.) Authority abounds for this Court’s
18 broad discretion to grant appropriate relief on any post-hearing motion. (*Shapiro v. Prudential*
19 *Property & Casualty Co.* (1997) 52 Cal.App.4th 722, 727 [“when a party brings a timely post-trial
20 motion, the trial court has broad discretion to determine the relief being requested”]; *20th Century*
21 *Ins. Co. v. Superior Court* (2001) 90 Cal.App.4th 1247, 1259–1260 [“under certain circumstances, a
22 motion to reconsider may be construed as one for a new trial”]; *Jacuzzi v. Jacuzzi Bros., Inc.* (1966)
23 243 Cal.App.2d 1, 23–24 [affirming ruling on motion to vacate when statutory new trial procedures
24 not followed]; *Ramirez v. Moran* (1988) 201 Cal.App.3d 431, 435 [“Without commenting on the
25 merits of [plaintiff’s] motion, it appears clear it more properly should have been denominated as a
26 motion for new trial rather than a motion to vacate. We shall treat it as such.”].)

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² Unspecified section references in this Memorandum are to the Code of Civil Procedure.

B. The Court Must Enter an Order Resolving the Motion by May 29, 2023

Section 660’s deadline for award or denial of new trial is strict:

[T]he power of the court to rule on a motion for a new trial shall expire ... 75 days after service on the moving party by any party of written notice of entry of judgment... . **If the motion is not determined within the 75-day period**, or within that period as extended, **the effect shall be a denial of the motion without further order of the court.** A motion for a new trial is not determined within the meaning of this section **until an order ruling on the motion is entered in the permanent minutes of the court or signed by the judge and filed with the clerk.**

(Code Civ. Proc., § 660, subd. (c) [emphases added].) This deadline is “mandatory and jurisdictional.” (*Dodge v. Superior Court* (2000) 77 Cal.App.4th 513, 517 (“*Dodge*”).)

Section 660 requires the Court to “determine” the motion within the 75-day period it prescribes. Moreover, a timely order must also specify the “ground or grounds” for granting a new trial. (Code Civ. Proc., § 657; *Dodge, supra*, 77 Cal.App.4th at p. 523.) “Ground or grounds” refers to the seven grounds for new trial section 657 authorizes. (*Oakland Raiders v. National Football League* (2007) 41 Cal.4th 624, 634 (“*Oakland Raiders*”).) Within 10 days of determining the motion — even if beyond the 75-day decision period — the Court must file a “specification of reasons.” (Code Civ. Proc., § 657; *Fergus v. Songer* (2007) 150 Cal.App.4th 552, 563 [10-day limit for statement of reasons “mandatory and jurisdictional”].) Thus, assuming MPTA’s March 15, 2023 service of the judgement on the District’s counsel started this clock, the statutory basis of decision must be reduced to writing, signed, and filed — or entered in the minutes — by **May 29, 2023**, but the Court may provide its reasoning by **June 8, 2023**.

Both an order granting new trial and its statement of reasons must be written. (*La Manna v. Stewart* (1975) 13 Cal.3d 413, 417 [“An oral recital, no matter how thoroughly it may have been prepared, cannot amount to compliance in any degree, ‘substantial,’ or otherwise, with a statutory directive that such a statement be in writing.”].) A statement of reasons must be sufficient to allow “meaningful” appellate review. (*Oakland Raiders, supra*, 41 Cal.4th at p. 637.) The Court must itself prepare the new trial order and specification of reasons — it cannot task counsel to do so, as with a

1 statement of decision. (*Estate of Sheldon* (1977) 75 Cal.App.3d 364, 370–371 [new trial order
2 prepared by counsel “jurisdictionally defective”].)

3 The Court must also “determine” the District’s motion to vacate judgment in writing by **May**
4 **29, 2023** if service of the judgment started the clock. (Code Civ. Proc., § 663a, subd. (b).) Further, if
5 a court grants a motion to vacate, it must enter “another and different judgment” when it does so.
6 (Code Civ. Proc., § 663.) “[A]n order of vacation, without directing entry of a new judgment, is
7 void.” (*Ramirez v. Moran* (1988) 201 Cal.App.3d 431, 435.) Thus, to grant the motion to vacate, the
8 Court must enter a new, written judgment by May 29, 2023.

9 To summarize the deadlines applicable to the present motions:

- 10 • March 15, 2023 — Service of judgment on counsel for District;
- 11 • March 17, 2023 — Filing and service of District’s intent to move to vacate judgement
12 and for a new trial;
- 13 • March 27, 2023 — District’s supporting memorandum due;
- 14 • April 6, 2023 — MPTA’s opposition brief and any accompanying documents due;
- 15 • April 11, 2023 — District’s reply brief due;
- 16 • May 29, 2023 (75 days after notice of judgment) — Court must “determine” District’s
17 motions for new trial and to vacate judgment by entering a written order specifying
18 the statutory grounds to grant new trial and/or entering a new and different judgment.
19 If the motion is not determined in this period, it is deemed denied. (Code Civ. Proc.,
20 §§ 657; 660; 663a, subd. (b)) Note that this is the Memorial Day holiday, so the Court
21 may wish to target May 26, 2023 for decision; and
- 22 • 10 days after filing order granting new trial (by June 8, 2023) — Court must file
23 “specification of reasons” for grant of new trial. (Code Civ. Proc., § 657.) If action is
24 taken on May 26th due to the May 29th holiday, this will be June 5th.

25 **C. The Court Should Order a new Trial or Vacate Judgement**

26 Post-trial motions allow a trial court to reconsider the record and to correct an error it
27 concludes occurred at trial. (*Foster v. Pestana* (1947) 77 Cal.App.2d 885, 890 [new trial motion
28 empowers judge to “consider the evidence anew, determine anew the facts, and set aside the verdict

1 if it is not just,” citation omitted].) The Court should correct the errors here by granting a new trial or
2 a different judgment. By doing so, the Court will save MPTA and the District taxpayers the expense
3 of an appeal on the issues identified in this motion, which must succeed.

4 **III. STATEMENT OF FACTS AND OF THE CASE³**

5 In 2012, the Monterey Peninsula faced two crises. First, court and State Water Resources
6 Control Board decisions stripping the Peninsula of most of its Carmel River and Seaside Basin
7 supply. (*California American Water v. City of Seaside* (2010) 183 Cal.App.4th 471, 473–475
8 (“*Seaside*”); 43 AR 295–454.⁴) Second, the sudden and unexpected loss of nearly half its revenue —
9 a User Fee the California American Water Company (“Cal-Am”) collected on water bills, which the
10 Public Utilities Commission (“PUC”) ordered Cal-Am to cease collecting in 2011. (*Monterey*
11 *Peninsula Water Management Dist. v. Public Utilities Com.* (2016) 62 Cal.4th 697 (“*MPWMD v.*
12 *PUC*”).)

13 To replace and augment lost User Fee revenue, the District adopted Ordinance No. 152
14 imposing the Water Supply Charge on properties connected to Cal-Am’s water system that delivers
15 District-supplied water. (681 AR 6433, ¶¶ 10, 20.) The District conducted a protest hearing under
16 California Constitution article XIII D, section 6, subdivision (a) in June 2012, but no majority protest
17 was lodged. (169 AR 1355; 175 AR 1377.) Nevertheless, the District changed the ordinance to
18 address concerns the Monterey County Association of Realtors expressed, including section 10,
19 subdivision (c), which promised to retire the charge if alternative funds became available through
20 Cal-Am bills. (581 AR 3924.)

21 The District committed Water Supply Charge proceeds, after duly noticed and public
22 meetings, to services and facilities necessary to ensure reliable water supplies to the region. In April
23 2013, the District pledged its proceeds to fund a \$4 million Rabobank loan. (674 AR 6272 & 3608,
24 § 3.01.) The loan was intended to: (1) retire a line of credit from Bank of America (previously
25 funded by the User Fee); (2) restore District reserves depleted by suspension of User Fees;

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28 ³ The facts of the case are discussed in more detail in the District’s Opposition Brief (“Opp. Brief”),
filed September 21, 2022, at pp. 7–14.

⁴ Citations to the Administrative Record are in the form “[tab] AR [page].”

1 (3) finance capital projects needed to replace Carmel River supplies; (4) fund reserves required by
2 loan covenants; and (5) fund other costs of reliable water service. (674 AR 6310–6311.) The District
3 thus provided Rabobank a first and exclusive lien on, and security interest in, Water Supply Charge
4 proceeds sufficient to make installment payments on the loan, and pledged to “take all actions as
5 required under the [District] Act to levy and collect an amount of Revenues during each Fiscal Year
6 that are at least sufficient ... to pay the Installment Payments when due.” (617 AR 4300, § 3.03; see
7 also *id.* at 4299, § 1.01 [“‘Revenues’ means the Water Supply Charge levied pursuant to Ordinance
8 No. 152.”].) Rabobank was subsequently merged with Mechanics Bank in 2019,⁵ and the loan now
9 has a balance of \$2.1 million dollars due June 30, 2023. (616 AR 4294; 646 AR 4826-4827; 690 AR
10 6463.) The District would breach this obligation if it failed to collect the Water Supply Charge in
11 sufficient amounts and, of course, Mechanics Bank is not a party here. (Cf. Gov. Code, § 5854 [Prop.
12 218 not interpreted as implying consent of bondholder to impairment of contract rights].)

13 In 2016, our Supreme Court reversed the PUC order forbidding Cal-Am to collect the User
14 Fee, remanding to the PUC. (*MPWMD v. PUC, supra*, 62 Cal.4th at p. 702.) However, Cal-Am
15 needed PUC approval to return the User Fee to bills. Although the District maintained the PUC had
16 no authority to constrain how the District spent revenues from the User Fee (see *id.* at p. 698; 616
17 AR 4293–4297, 619 AR 4304–4312), it settled the matter to avoid further legal fees and uncertainty
18 that impaired its ability to plan for the Peninsula’s future water supply. After multiple hearings, Cal-
19 Am and the District jointly moved to the PUC in October 2016, seeking approval to reinstate the
20 User Fee conditioned on the Cal-Am ceasing collection of the District’s mitigation and conservation
21 surcharges. (Request for Judicial Notice (“RJN”), Exh. A.) The PUC agreed and ordered Cal-Am
22 both to collect the User Fee and cease collection of the surcharges. (RJN, Exh B., at pp. 11, 15–16.)

23 It took over a year to reinstate the User Fee —the Supreme Court’s decision issued January
24 2016, but the District could not again collect the User Fee until February 2017. (290 AR 2549.) User
25 Fee revenue have since been used almost exclusively to support mitigation and conservation efforts
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28 ⁵ See Mechanics Bank and Rabobank, N.A. Announce Strategic Business Combination Transaction, March 15, 2019, available at < <https://www.mechanicsbank.com/About-Us/Who-We-Are/News-Press/2019-News-Articles-Press-Releases/Mechanics-Bank-and-Rabobank-NA-Announce-Strategic-Business-Combination-Transaction> >, last accessed March 24, 2023.

1 previously funded through surcharges, but which the PUC ordered shifted to the User Fee. (263 AR
2 2383; 581 AR 3924; 616 AR 4294–4295; 687 AR 6455.) Achieving the District’s statutory purposes,
3 and acquiring Cal-Am’s distribution system after Peninsula voters’ 2018 overwhelming approval of
4 Measure J (647 AR 4862–4864, 648 AR 4865), has required substantial funding, not least because
5 Cal-Am has litigated prolifically. Indeed, this suit has the effect of frustrating implementation of
6 Measure J, to the detriment of Peninsula ratepayers.

7 **IV. ARGUMENT**

8 **A. User Fee Revenues are not “Available” to Replace the Water Supply**
9 **Charge**

10 The Court’s March 3, 2023 Order Granting Petition for Writ of Mandate and Request for
11 Declaratory Relief (“Order”) found Ordinance 152’s section 10, subdivision (c) unambiguously
12 required the District to cease collecting the Water Supply Charge in an amount equal to User Fee
13 revenues when it was reinstated. (Order at p. 13, 16.) The operative portion that subdivision states:
14 “Notwithstanding any other provision of this Ordinance, the District shall not collect a Water Supply
15 Charge pursuant to this Ordinance... to the extent alternative funds are available via a charge
16 collected on the California American Water Company bill... .” (681 AR 6441.) The Order rejects the
17 District’s conclusion that User Fee revenue is not available because the District must dedicate it to
18 mitigation, conservation, and overhead, rather than water supply (to which Water Supply Charge
19 Revenue is limited). (Order at pp. 8, 15.)

20 However, the Order does not account for the PUC order’s restriction on the District’s
21 collection of User Fee revenues, transferring mitigation and conservation surcharges from Cal-Am to
22 the District User Fee. (RJN, Exhs. A, B.) The Order also does not fully address the District’s
23 argument that Water Supply Charge revenues have been pledged to creditors. (Opp. Brief at pp. 25–
24 26.)

25 First, the Court’s order assumes the District chooses to apply User Fee revenues to
26 mitigation and conservation, and could spend them on water supply instead. (Order at p. 8.) While
27 the District may legally use excess User Fee revenues, if any, to support water supply activities, the
28 PUC order requires it to apply User Fee revenue for mitigation and conservation obligations. (RJN,

1 Exhs. A, B, C; 36 AR 322–324; 635 AR 4385.) The District has never had access to reinstated User
2 Fee proceeds free of that requirement. User Fee revenues are not alternative funds available for
3 water supply to the extent of these obligations. The District cannot spend the same money twice.

4 Second, User Fee revenues are not available alternative funds to replace the Water Supply
5 Charge, as the District pledged Water Supply Charge revenues as security for the Mechanics Bank
6 loan. (674 AR 6272 & 3608, § 3.01.) Security interests are property rights protected by due process
7 (e.g., *Cassel v. Kolb* (1999) 72 Cal.App.4th 568, 579 [security interest conveys due process right to a
8 fair trial]) which cannot be impaired in the absence of the owner. And a government pledge of funds
9 is protected by the contracts clause of our Constitution, too. (*Goodman v. County of Riverside* (1983)
10 140 Cal.App.3d 900, 910 [“unconstitutional impairment may arise when only a portion of a
11 bondholder’s security has been removed”].) The Court should, at least, limit its ruling to allow
12 continued collection of the Water Supply Charge to the extent necessary to honor that commitment, a
13 definite term.

14 **B. The Contracts Clause Also Precludes an Order Retiring the Water Supply**
15 **Charge Completely**

16 As noted, eliminating the Water Supply Charge would violate the rights of those who
17 contracted with the District in reliance on Ordinance No. 152, in violation of article I, section 9 of
18 the California Constitution. “Neither the court nor the Legislature may impair the obligation of a
19 valid contract ... and a court cannot lawfully disregard the provisions of such contracts or deny to
20 either party his rights hereunder.” (*Bradley v. Superior Court* (1957) 48 Cal.2d 509, 519; see also
21 *City of Los Angeles v. Los Angeles City Water Co.* (1882) 61 Cal. 65, 69 [ordinance “which assails
22 the privilege [to provide water service] already granted impairs the contract on which it depends, and
23 is void”].) And MPTA has not named Mechanics Bank here, asking this Court to impair the April 24,
24 2013 loan (674 AR 6272–6394) without notice to, or opportunity to be heard by, its beneficiary. This
25 loan, approved after public hearings and before MPTA’s first, unsuccessful suit (see 674 AR 6275–
26 6278), grants Mechanics Bank a lien on Water Supply Charge revenue. (674 AR 6309, § 3.03; 731
27 AR 6814.) The time for challenge to that loan has long since run. (Code Civ. Proc. § 338, subd. (a)
28 [three-year statute for violation of statute or Constitution].)

1 Completely sunseting Ordinance No. 152 will impair this agreement, leave the District
2 unable to achieve its statutory mandates, and cannot have been the ordinance’s intent. (E.g., *People*
3 *v. Gutierrez* (2014) 58 Cal.4th 1354, 1373 [constitutional doubt canon].) The District must be able to
4 collect at least that portion of the Water Supply Charge necessary to honor the Mechanics Bank loan.
5 (Cf. *Valdes v. Cory* (1983) 139 Cal.App.3d 773, 791 [statute deferring contributions to PERS
6 violated contracts clause].) Although the loan ends June 30, 2023 and the District may then pay it
7 off, the Court’s Order must protect Mechanics Banks rights so long as the lien exists, especially as
8 refund claims are now likely. (Slentz Decl., ¶ 5; Exh D.)

9 **C. Mechanics Bank is an Indispensable Party and the Order Issued in its**
10 **Absence Violates Due Process**

11 Failing to collect the Water Supply Charge, despite Mechanics Bank’s lien, would impair
12 those contract rights in its absence, and is grounds for dismissal. Joinder is required if a third party
13 “claims an interest relating to the subject of the action and is so situated that the disposition of the
14 action in his absence may (i) as a practical matter impair or impede his ability to protect that interest
15” (Code Civ. Proc., § 389, subd. (a).) In determining whether a case must be dismissed for lack of
16 joinder, the Court must consider:

- 17 (1) to what extent a judgment rendered in the person’s absence might be prejudicial to
18 him or those already parties; (2) the extent to which, by protective provisions in the
19 judgment, by the shaping of relief, or other measures, the prejudice can be lessened or
20 avoided; (3) whether a judgment rendered in the person’s absence will be adequate;
21 (4) whether the plaintiff or cross-complainant will have an adequate remedy if the
22 action is dismissed for nonjoinder.

23 (Code Civ. Proc., § 389, subd. (b).) Here, absent modification of the judgment to respect Mechanics
24 Bank’s security interest, due process required its participation. The order violates the District’s rights
25 too, compelling it to breach the loan contract. The Court should grant a new trial, and direct that
26 Mechanics Bank be joined, so it may defend its interests in the Water Supply Charge. Alternatively,
27 the Court must reshape its judgement to protect Mechanics Bank ’s rights. Doing so will still grant
28 MPTA most of the relief it seeks, as the loan is but one use of the disputed funds.

1 **V. CONCLUSION**

2 The Court should vacate its current order and order a new trial to address the extent to which
3 the PUC’s order makes User Fee revenues unavailable as an alternative to the Water Supply Charge,
4 and to join Mechanics Bank. Alternatively, the Court should vacate its order and enter a new
5 judgement allowing the District to continue collecting the Water Supply Charge 1) for so long as and
6 to the extent the PUC directs User Fee revenue be spent on mitigation and conservation, and 2) to
7 the extent necessary to honor the District’s loan agreement with Mechanics Bank.

8
9 DATED: March 27, 2023

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PROOF OF SERVICE

Monterey Peninsula Taxpayers' Association, Inc., et al. v. The Monterey Peninsula Water Management District, et al.

Case No.: 21CV003066

File No. 43025.0007

I, Christina M. Rothwell, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91101-2109. My email address is: CRothwell@chwlaw.us. On March 27, 2023, I served the document(s) described as **RESPONDENT AND DEFENDANT MONTEREY PENINSULA WATER MANAGEMENT DISTRICT'S MEMORANDUM IN SUPPORT OF MOTION TO VACATE JUDGMENT AND FOR A NEW TRIAL (CODE CIV. PROC., §§ 657, 663)**, on the interested parties in this action addressed as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on March 27, 2023, from e-mail address: CRothwell@chwlaw.us. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 27, 2023, at Pasadena, California.

Christina M. Rothwell

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SERVICE LIST

Monterey Peninsula Taxpayers' Association, Inc., et al. v. The Monterey Peninsula Water Management District, et al.
Monterey Superior Court Case No.: 21CV003066
File No. 43025.0007

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