



This meeting has been noticed according to the Brown Act rules. This agenda was posted on Monday, January 10, 2022.

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

*Susan Schiavone
Jason Campbell
Melodie Chrislock
Marli Melton
Mike Rachel
Kevan Urquhart
Bill Peake
Scott Dick
John Tilley*

MPWMD Contacts:

*General Manager,
David J. Stoldt*

*Administrative Services
Manager/CFO
Suresh Prasad*

*Board Clerk,
Joel G. Pablo*

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 on the District's website prior to the meeting. Documents distributed at the meeting will be made available upon request and posted to the District's website within five days following the meeting

Agenda

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

Friday, January 14, 2022 at 2:00 PM, *Virtual Meeting*

As a precaution to protect public health and safety, and pursuant to provisions of AB 361, this meeting will be conducted via Zoom Video/Teleconference only.

Join the meeting at this link:

<https://us06web.zoom.us/j/84995242525?pwd=RnNsSTVNMmU0WThSZ0NiOXVCVFJjUT09>

Or access the meeting at: zoom.us

Webinar ID: 849 9524 2525

Meeting password: 01142022

Participate by phone: (669) 900 9128

For detailed instructions on connecting to the Zoom meeting see page 2 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 October 13, 2021 Committee Meeting Minutes
2. Review Draft 2021 Annual Report and Authorize Release to the MPWMD Board of Directors

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

3. Review of Revenue and Expenditures of Water Supply Charge Related to Water Supply Projects
4. Discuss District Response to MPTA ("Taxpayers") Lawsuit

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

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

Adjournment

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. MPWMD will also make a reasonable effort to provide translation services upon request. Submit requests by 5:00 pm on Tuesday, January 11, 2022 to joel@mpwmd.net, or call (831) 658-5652. Alternatively, you may contact Sara Reyes, Administrative Services Division at 831-658-5610.

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://us06web.zoom.us/j/84995242525?pwd=RnNsSTVNMmU0WThSZ0NiOXVCVFhjUT09> 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. 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. 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. 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.

Presenting Public Comment

Receipt of Public Comment – the Chair will ask for comments from the public on all items. Limit your comment to 3 minutes but the Chair could decide to set the time for 2 minutes.

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

Submit Written Comments

If you are unable to participate via telephone or computer to present oral comments, you may also submit your comments by e-mailing them to comments@mpwmd.net with one of the following subject lines "PUBLIC COMMENT ITEM #" (insert the item number relevant to your comment) or "PUBLIC COMMENT – ORAL COMMUNICATIONS". Comments must be received by 12:00 p.m. on Friday, January 14, 2022. Comments submitted by noon will be provided to the Board of Directors and compiled as part of the record of the meeting.

ORDINANCE NO. 152 OVERSIGHT PANEL

ACTION ITEM

1. CONSIDER ADOPTION OF OCTOBER 13, 2021 COMMITTEE MEETING MINUTES

Meeting Date: January 14, 2021

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: Draft minutes of the October 13, 2021 committee meeting (**Exhibit 1-A**) are attached.

RECOMMENDATION: Consider adoption of the October 13, 2021 committee meeting minutes.

EXHIBIT

1-A Draft Minutes of October 13, 2021 Committee Meeting



EXHIBIT 1-A

DRAFT MEETING MINUTES

Ordinance No. 152 Citizen's Oversight Panel of the Monterey Peninsula Water Management District October 13, 2021

*Pursuant to Governor Newsom's Executive Orders N-29-20 and N-33-20,
the meeting was conducted with virtual participation via Zoom.*

Call to Order The meeting was called to order at 3:00 pm via Zoom by David J. Stoldt, General Manager / Chair to the Panel.

Roll Call

Committee Members Present:

Susan Schiavone
Jason Campbell
Bill Peake
Melodie Chrislock
Marli Melton
Mike Rachel
Kevan Urquhart
John Tilley
Scott Dick

MPWMD Staff members present:

David J. Stoldt, General Manager / Chair to the Panel
Suresh Prasad, Administrative Services Manager/CFO

Joel G. Pablo, Board Clerk

District Counsel Present:

David Laredo, Esq. with De Lay and Laredo

Committee Members Absent:

Comments from the Public:

Opened Public Comment; No Public Comment Received.

Action Items

1. **Consider Adoption of the Committee Meeting Minutes of July 8, 2021**

Opened Public Comment; No public comments were directed to the panel for Item No. 1.

A motion was made by Jason Campbell and seconded by Susan Schiavone to approve the draft committee meeting minutes of July 8, 2021. The motion passed on a roll-call vote of 9-Ayes (Schiavone, Campbell, Chrislock, Peake, Melton, Rachel, Dick, Tilley and Urquhart), 0-Noes, 0-Abstain and 0-Absent.

Discussion Items

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

David J. Stoldt, General Manager/Panel Chair provided introductory remarks. Suresh Prasad, Administrative Services Manager/CFO reviewed Exhibits 2-A (Water Supply Receipts) and 2-B (Water Supply Charge Availability Analysis) providing an overview of the FY2020-21 Unaudited Actuals from revenues, expenditures, project expenditures and overall totals for each

and answered questions from the committee.

Opened Public Comment; No public comments received for Item No. 2.

3. **Discuss Topics for 2020 Annual Report (Verbal Report)**

David J. Stoldt, General Manager sought committee input and noted the panel's charge is to provide to the MPWMD Board of Director's an Annual Report of the Ordinance No. 152 Citizen's Oversight Panel. The panel identified the following topics to be included in the draft Annual Report: Dual Collection of the Water Supply Charge (WSC) and District User Fee, paying off the Mechanics Bank Loan and whether the WSC can be used to fund costs related to Measure J.

Opened Public Comment; No public comment received on Item No. 3.

4. **Discuss Topics from July 8th Meeting: (a) Allocating Water Supply Charge to Specific Projects; (b) Simplification of Water Supply Charge Report**

David J. Stoldt, General Manager and Suresh Prasad, Administrative Services Manager/CFO reviewed Exhibits 4-A, Water Supply Charge Report (Water Supply Fund) that were submitted with the committee packet and answered questions from the committee.

Suresh provided an overview of the 2021 unaudited figures, the totals since inception of the Water Supply Charge and noted that the Water Supply Funds are insufficient for covering all the Water Supply Projects/Activities. Stoldt highlighted in 2018, under project reimbursements the District received an approximately \$5.5 million from the state revolving fund reimbursement program for pre-construction funding of the Pure Water Monterey project.

Opened Public Comment; No public comment received on Item No. 4.

5. **Discuss Performance of District User Fee to Date**

David J. Stoldt, General Manager reviewed Exhibit 5-A – MPWMD User Fee Revenue Collections for FY 2020 – 21.

Opened Public Comment; No public comment received on Item No. 5.

Other Items

6. **Water Supply Project Update (Verbal Report)**

David J. Stoldt, General Manager made the following points and answered questions from the Panel:

- (a) A Memorandum of Understanding is in the works to have California American Water to sign off on a Water Purchasing Agreement on the Pure Water Monterey Expansion with MPWMD and M1W following the California Public Utilities Commission approval.
- (b) Two Deep Injection Wells for the Pure Water Monterey Base Project has been experiencing delays due to supply chain issues attributed to the COVID-19 pandemic.
- (c) Aquifer Storage and Recovery is complete and landscaping needs to be done.
- (d) California American Water is still pursuing a Desalination Plant.
- (e) Pure Water Monterey Base Project will be running at higher capacity.

Adjourn: Chair Stoldt adjourned the meeting at 4:00 PM

U:\staff\Board_Committees\Ord152\2022\20220114\01\Item-1-Exhibit 1-A.docx

ITEM: ACTION ITEM

2. REVIEW DRAFT 2021 ANNUAL REPORT AND AUTHORIZE RELEASE TO THE MPWMD BOARD OF DIRECTORS

Meeting Date: January 14, 2022 **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: This action does not constitute a project as defined by the California Environmental Quality Act Guidelines section 15378

SUMMARY: The Panel has the opportunity to make recommendations or provide guidance to the District Board. **Exhibit 2-A** attached is a draft 2021 Annual Report on which the Panel is requested to provide suggested edits or changes at its January 14, 2021 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.

EXHIBIT

2-A Draft 2021 Annual Report

EXHIBIT 2-A

DRAFT Ordinance 152 Citizens Oversight Panel

2021 Annual Report

2021 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. **Dual Collection of the Water Supply Charge and District User Fee:** The Panel reminds the Board that the 2019-20 fiscal year was the third year of dual collection of the Water Supply Charge and the User Fee, therefore it may be time to begin a plan for their use, including reductions or possible sunsets of either or both.

The User Fee was re-established for collection on the Cal-Am bills 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 was because: (i) the User Fee would primarily fund programs previously in Cal-Am surcharges (District conservation and river mitigation), so there may be little “new” revenue initially; (ii) there were still large near-term expenditures required on water supply projects; and (iii) Cal-Am had a recent history of significant revenue undercollection, so it made sense to have a period of collection until the predictability of the User Fee revenue was better known. However, that period has passed and much has been learned.

At its October 19, 2020 meeting the District Board adopted a policy that if User Fee collections in a fiscal year exceed the budget, then the excess will be applied in the following fiscal year budget in the following priority: First, to pay off the Mechanic’s Bank loan; Second, to repay reserves used for water supply project costs; Third, to sunset the Water Supply Charge.

The FY2020-21 budget set aside \$500,000 for paying off the Mechanics Bank loan, which was done in August 2021. The current 2021-22 budget also has \$500,000 in it to also pay down the loan. The principal balance entering the 2022-23 Fiscal Year is expected to be approximately \$2.2 million. June 30, 2023 is the date to pay it off in full or refinance.

The Panel understand, however, in the next few years the Water Supply Charge will primarily be used to pay ongoing capital costs of the Aquifer Storage and Recovery project, the Pure Water Monterey operating reserve, a fourth deep well for Pure Water Monterey, and the recently authorized Pure Water Monterey Expansion. It is likely the collections will be insufficient to meet all MPWMD water supply needs next year and

those activities will again be subsidized by other District revenues, including the User Fee. That means that the ability to begin sunset of the Water Supply may be off in the future.

- 2. Measure J Costs:** The Panel recognizes that there is disagreement over whether 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, such as the cost of the LAFCO process, an appraisal and rate 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. At this time, the majority of the Panel recommends that the District does not aggressively pursue a sunset of the Water Supply Charge at the expense of sufficiency of District reserves for liquidity.

Respectfully submitted by the Ordinance 152 Citizens Oversight Panel, February 24, 2022.

ORDINANCE NO. 152 OVERSIGHT PANEL

DISCUSSION ITEM

**3. REVIEW OF REVENUE AND EXPENDITURES OF WATER SUPPLY CHARGE
RELATED TO WATER SUPPLY PROJECTS**

Meeting Date: January 14, 2022

From: David J. Stoldt
General Manager

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 3-A** and **3-B** submitted for discussion for the January 14,
2022 committee meeting.

EXHIBIT

3-A Water Supply Charge Receipts

3-B Water Supply Charge Availability Analysis

EXHIBIT 3-A

Monterey Peninsula Water Management District

Water Supply Charge Receipts

	FY 2021-2022 Original Budget	thru 09/30/2021 FY 2021-2022 Unaudited Actuals	FY 2020-2021 Revised Budget	FY 2020-2021 Audited Actuals
Water Supply Charge	\$3,400,000	\$0	\$3,300,000	\$3,422,117
Percentage		0.0%		103.7%

EXHIBIT 3-B

Monterey Peninsula Water Management District

Water Supply Charge Availability Analysis

	thru 09/30/2021			
	FY 2021-2022 Original Budget	FY 2021-2022 Unaudited Actuals	FY 2020-2021 Revised Budget	FY 2020-2021 Audited Actuals
Beginning Fund Balance		\$8,469,682		\$8,506,593
Water Supply Charge	\$3,400,000	\$0	\$3,300,000	\$3,422,117
Capacity Fee	400,000	147,689	400,000	474,040
PWM Water Sales	9,828,000	2,076,685	4,800,000	5,908,182
Project Reimbursement	1,359,100	0	1,125,700	622,842
Property Taxes	1,751,800	0	1,850,000	2,090,954
User Fees	749,300	86,682	994,950	843,136
Interest	70,000	(5,449)	100,000	52,882
Reclamation Project	20,000	0	520,000	0
Other	5,000	7,590	5,000	3,322
Total Revenues	\$17,583,200	\$2,313,197	\$13,095,650	\$13,417,475
Direct Personnel	1,264,804	443,282	1,278,734	1,356,864
Direct Supplies & Services*	141,471	24,587	120,219	115,453
Legal	220,000	43,031	220,000	102,623
Project Expenditures [see below]	16,757,200	2,625,309	15,217,400	10,750,030
Project Expenditures-Reimbursements [see below]	725,000	229,877	954,700	440,685
Fixed Asset Purchases	75,800	0	63,000	12,647
Contingencies	23,800	0	23,100	0
Debt Service	230,000	0	230,000	219,136
Election Expense	0	0	66,000	39,477
Indirect Labor*	189,196	45,767	183,066	183,066
Indirect Supplies & Services*	287,229	49,918	244,081	234,405
Reserve	1,106,700	0	1,097,850	0
Total Expenditures	\$21,021,200	\$3,461,770	\$19,698,150	\$13,454,386
Net Revenue Over Expenses**	(\$3,438,000)	(\$1,148,573)	(\$6,602,500)	(\$36,911)
Ending Fund Balance		\$7,321,109		\$8,469,682
Project Expenditures	FY 2021-2022 Original Budget	FY 2021-2022 Unaudited Actuals	FY 2020-2021 Revised Budget	FY 2020-2021 Audited Actuals
PWM Project	\$1,865,000	\$0	\$4,212,000	\$1,233,201
PWM Project - Expansion	\$1,200,000	\$0	\$0	\$0
PWM Project - Operating Reserve	\$1,385,000	\$461,406	\$1,150,000	\$751,683
PWM Project - Water Purchase	\$9,695,000	\$2,048,581	\$4,800,000	\$6,041,594
ASR Phase I	\$1,853,700	\$0	\$3,922,400	\$2,448,823
Reimbursement Projects	\$725,000	\$229,877	\$954,700	\$440,685
Cal-Am Desalination Project	\$50,000	\$0	\$50,000	\$0
ASR Expansion	\$0	\$0	\$80,000	\$0
Other Water Supply Projects - IFIM/GSFlow	\$50,000	\$0	\$0	\$7,433
Local Water Projects	\$157,000	\$0	\$307,000	\$0
Measure J/Feasibility Study	\$48,000	\$30,805	\$192,000	\$198,200
Drought Contingency Plan	\$0	\$0	\$0	\$0
Los Padres Long Term Plan	\$339,300	\$64,587	\$390,000	\$27,893
PB Reclamation Project	\$0	\$0	\$0	\$0
Other Project Expenditures	\$114,200	\$19,930	\$114,000	\$41,203
Total Project Expenses	\$17,482,200	\$2,855,186	\$16,172,100	\$11,190,715

*: Indirect costs as percent of Water Supply Charge 14.0% #DIV/0! 12.9% 12.2%

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

ITEM: DISCUSSION ITEM

4. DISCUSS DISTRICT RESPONSE TO MPTA (“TAXPAYERS”) LAWSUIT

Meeting Date: January 14, 2022 **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: This action does not constitute a project as defined by the California Environmental Quality Act Guidelines section 15378

DISCUSSION: On September 28, 2021 the Monterey Peninsula Taxpayers’ Association filed a Petition for Writ of Mandate and Complaint for Declaratory Relief against the District regarding the District’s Water Supply Charge. The Writ was discussed with the Ordinance 152 Panel in closed session as Item 7 of its October 13, 2021 committee meeting.

On November 1, 2021 the District filed its Demurrer and Motion to Strike in the case. Highlights of the District’s position include:

- The District demurs on the ground the Court has no jurisdiction of the subject of the causes of action alleged in the pleading.
- The District demurs on the ground MPTA does not state facts sufficient to constitute a cause of action against the District.
- The Causes of Action Fail to State a Claim (a) Maintaining the Water Supply Charge does not impose, extend or increase a tax so as to trigger Proposition 218, and (b) Ordinance 152 imposes no mandatory duty a writ may enforce.

A copy of the District’s Demurrer and Motion to Strike is included as **Exhibit 4-A**, attached. This is being included as an informational item and *members of the Ordinance 152 Panel bear no liability* for statements included in the document or outcomes of the lawsuit.

EXHIBIT

4-A District’s Demurrer and Motion to Strike

EXHIBIT 4-A

1 MICHAEL G. COLANTUONO, State Bar No. 143551
MColantuono@chwlaw.us
2 MATTHEW C. SLENTZ, State Bar No. 285143
MSlantz@chwlaw.us
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4 COLANTUONO, HIGHSMITH & WHATLEY, PC
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5 Pasadena, California 91101-2109
Telephone: (213) 542-5700
6 Facsimile: (213) 542-5710

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

7 Attorneys for Respondent
The Monterey Peninsula Water Management District
8

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

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

14 Petitioners and Plaintiffs,

15 v.

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

18 Respondents and Defendants.
19
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CASE NO. 21CV003066
Unlimited Jurisdiction

(Case assigned to Hon. Marla O. Anderson)
Dept 14

**MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT'S
DEMURRER TO MONTEREY
PENINSULA TAXPAYERS'
ASSOCIATION'S PETITION AND
COMPLAINT**

Complaint Filed: September 28, 2021

Hearing Date: December 17, 2021

Time: 9:00 a.m.

Dept.: 14

Colantuono, Highsmith & Whatley, PC
670 W. NAPA STREET, SUITE F
SONOMA, CA 95476

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 17, 2021 at 9:00 a.m., or as soon thereafter as
3 counsel may be heard in Department 14 of the above-mentioned Court, at 1200 Aguajito Road,
4 Monterey, CA 93940, Defendant and Respondent Monterey Peninsula Water Management District
5 (“District”) will and hereby does demur to Plaintiffs and Petitioners Monterey Peninsula Taxpayers’
6 Association, Inc.’s, and Richards J. Heuer III’s (together, “MPTA”) Verified Petition for Writ of
7 Mandate and Complaint for Declaratory Relief (“Petition”).

8 The District demurs to the Petition in its entirety, and separately as to its first and second
9 causes of action, under Code of Civil Procedure section 430.10, subdivision (a) on the ground the
10 Court has no jurisdiction of the subject of the causes of action alleged in the pleading.

11 The District demurs to the Petition in its entirety, and separately as to its first and second
12 causes of action, under Code of Civil Procedure section 430.10, subdivision (e) on the ground they
13 do not, and each does not, state facts sufficient to constitute a cause of action against the District.

14 The District demurs to the Petition in its entirety, and separately as to its first and second
15 causes of action, under Code of Civil Procedure section 430.10, subdivision (f) on the ground they
16 are, and each is, uncertain, ambiguous, and unintelligible.

17 The demurrer is based on this Notice, the attached Demurrer, the attached Memorandum, the
18 accompanying Request for Judicial Notice and Declaration of Matthew C. Slentz, the records of this
19 case, and such arguments and evidence as the District may present.

20
21 DATED: November 1, 2021

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**


22
23
24 
25 MICHAEL G. COLANTUONO
26 MATTHEW C. SLENTZ
27 CONOR W. HARKINS
28 Attorneys for Respondent
The Monterey Peninsula Water Management
District

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Colantuono, Highsmith & Whitley, PC
670 W. NAPA STREET, SUITE F
SONOMA, CA 95476

TABLE OF AUTHORITIES

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Cases

California American Water v. City of Seaside
 (2010) 183 Cal.App.4th 47110

California Cannabis Coalition v. City of Upland
 (2017) 3 Cal.5th 92416

California Correctional Peace Officers Assn. v. State Personnel Board
 (1995) 10 Cal.4th 113314

California Hotel & Motel Assn. v. Industrial Welfare Com.
 (1979) 25 Cal.3d 20018

Campbell v. Regents of University of California
 (2005) 35 Cal.4th 31114

Center for Biological Diversity v. California Dept. of Forestry and Fire Protection
 (2014) 232 Cal.App.4th 93118

Coachella Valley Water District v. Superior Court of Riverside County
 (2021) 61 Cal.App.5th 75513, 14, 18

County of Butte v. Superior Court
 (1985) 176 Cal.App.3d 69317

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3 *McLeod v. Vista Unified Sch. Dist.*
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13 *Planning & Cons. League v. Castaic Lake Water Agency*
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28 *Writers Guild of Am., Inc. v. City of Los Angeles*
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3 **California Constitution**

4 California Constitution, Article XIII C.....16

5 California Constitution, Article XIII C, § 2.....16

6 **Statutes**

7 Code of Civil Procedure, § 430.10, subd. (a).....2, 7, 12

8 Code of Civil Procedure, § 430.10, subd. (e).....2, 7, 12

9 Code of Civil Procedure, § 430.10, subd. (f).....2, 7, 12

10 Code of Civil Procedure, § 860.....12, 14

11 Code of Civil Procedure, § 863.....12, 14

12 Government Code, § 53750, subd. (e).....16

13 Government Code, § 53750, subd. (h)(1)16

14 Water Code, § 3006613

15 Water Code, § 31702.314

16

17 **Court Rules**

18 California Rules of Court, Rule 2.112(2).....19

19 **Ordinances**

20 Monterey Peninsula Water Management District Ordinance 152 *passim*

21 Monterey Peninsula Water Management District Ordinance 152, § 311

22 Monterey Peninsula Water Management District Ordinance 152, § 413

23 Monterey Peninsula Water Management District Ordinance 152, § 911

24 Monterey Peninsula Water Management District Ordinance 152, § 1011, 13

25 Monterey Peninsula Water Management District Ordinance 152, § 10, subd (B)17

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28

1 **DEMURRER**

2 Defendant and Respondent Monterey Peninsula Water Management District demurs to the
3 Verified Petition for Writ of Mandate and Complaint for Declaratory Relief (“Petition”) on these
4 grounds:

5
6 **DEMURRER TO PETITION**

7 1. The Court has no jurisdiction of the subject of the causes of action alleged in the
8 Petition. (Code Civ. Proc., § 430.10, subd. (a).)

9 2. The Petition fails to state facts sufficient to constitute a cause of action. (Code Civ.
10 Proc., § 430.10, subd. (e).)

11 3. The Petition is uncertain. (Code Civ. Proc., § 430.10, subd. (f).)

12
13 **DEMURRER TO FIRST CAUSE OF ACTION**

14 4. The Court has no jurisdiction of the subject of the first cause of action. (Code Civ.
15 Proc., § 430.10, subd. (a).)

16 5. The first cause of action fails to state facts sufficient to constitute a cause of action.
17 (Code Civ. Proc., § 430.10, subd. (e).)

18 6. The first cause of action is uncertain. (Code Civ. Proc., § 430.10, subd. (f).)

19
20 **DEMURRER TO SECOND CAUSE OF ACTION**

21 7. The Court has no jurisdiction of the subject of the second cause of action. (Code Civ.
22 Proc., § 430.10, subd. (a).)

23 8. The second cause of action fails to state facts sufficient to constitute a cause of action.
24 (Code Civ. Proc., § 430.10, subd. (e).)

25 9. The second cause of action is uncertain. (Code Civ. Proc., § 430.10, subd. (f).)

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DATED: November 1, 2021

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**

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1 **I. INTRODUCTION**

2 Temporarily stripped of its primary funding source by a decision of the Public Utilities
3 Commission (“PUC”) our Supreme Court later set aside, the Monterey Peninsula Water Management
4 District (“District”) established a fee collected on the property tax roll to fund its water services. The
5 fee ordinance established a policy to reduce or eliminate the fee when the Board — in its legislative
6 discretion — determined its proceeds were no longer needed. Perhaps due to the District’s voters’
7 ambitious approval of Measure J, to require the District to seek to acquire Cal. Am’s water
8 distribution system, the District Board determined these proceeds continue to be needed,
9 notwithstanding restoration of the revenue lost earlier.

10 Petitioners Monterey Peninsula Taxpayers’ Association, Inc. and Richards J. Heuer III
11 (together, “MPTA”) sue to enforce that policy as though it were mandatory, ministerial, and the
12 proper subject of a writ. None of these is so. The policy establishes no ministerial rule a writ may
13 enforce and, of course, courts rarely interfere with budgetary decisions of the political branches —
14 doing so only when law provides a clear, judicially administrable standard.

15 Accordingly, this suit cannot survive the pleading stage. If it could, the MPTA must amend to
16 state much more plainly what act of the District’s Board it claims merits judicial review, demonstrate
17 that action is amenable to writ relief, and show it timely sued after exhausting administrative
18 remedies. The Proposition 218 claim cannot be saved by amendment, as that measure applies to
19 actions to increase rates or charges and MPTA does not – cannot – allege that occurred.

20 At bottom, MPTA brings a political fight here, akin to Cal. Am’s aggressive and well-funded
21 effort to retain its lucrative, but not especially well-managed, franchise. Courts address such
22 questions cautiously and only when clear legal standards can guide them. This case affords none.

23 **II. STATEMENT OF FACTS¹**

24 This is not the first lawsuit between MPTA and the District over the District’s collection of
25 the Water Supply Charge. The Water Supply Charge is discussed at length in *Monterey Peninsula*
26 *Taxpayers’ Association v. Board of Directors of Monterey Peninsula Water Management District*
27 (Cal. Ct. App., Apr. 11, 2018, No. H042484) 2018 WL 1736826, at *1–4.

28 _____
¹ This Statement of Facts is identical to that included in the accompanying Motion to Strike.

1 The Monterey Peninsula Water Management District Law (“District Law”), enacted in 1977
2 created the District to address the Legislature’s concern that “water problems in the Monterey
3 Peninsula area require integrated management” and the “need for conserving and augmenting the
4 supplies of water by integrated management of ground and surface water supplies, for control and
5 conservation of storm and wastewater, and for promotion of the reuse and reclamation of water.”
6 (Wat. Code App. (West’s) § 118–2.) The District Law broadly empowers the District “to do any and
7 every lawful act necessary in order that sufficient water may be available for any present or future
8 beneficial use or uses of the lands or inhabitants within the district, including, but not limited to,
9 irrigation, domestic, fire protection, municipal, commercial, industrial, recreational, and all other
10 beneficial uses and purposes.” (*Id.*, § 118–325.) This includes power to “levy and collect taxes and
11 assessments upon land and improvements to land within the district for the purposes of carrying on
12 the operations and paying the obligations of the district” (*Id.*, § 118-306.)

13 California-American Water Company (“Cal-Am”) is an investor-owned utility supplying
14 water to the Monterey Peninsula. (See *Monterey Peninsula Water Management Dist. v. Public*
15 *Utilities Com.* (2016) 62 Cal.4th 693 (*MPWMD v. PUC*); *California American Water v. City of*
16 *Seaside* (2010) 183 Cal.App.4th 471, 473.) The District collaborates with Cal-Am to maintain and
17 augment area water supplies. Historically, the District’s primary funding source was a “User Fee”
18 collected on Cal-Am water bills, which accounted for 46 percent of District annual revenues before
19 it was discontinued. In 2011, however, the PUC ordered Cal-Am to suspend User Fee collection.
20 (*MPWMD v. PUC, supra*, 62 Cal.4th at p. 697.) Our Supreme Court overturned that decision. (*Id.* at
21 p. 702.) The District began receiving the User Fee again in 2016.

22 In 2012, while Supreme Court review was pending, the District adopted Ordinance 152 to
23 fund its services. Ordinance 152 imposes an annual “Water Supply Charge” on property connected
24 to the main Cal-Am water distribution system. (Pet., Exh A (“Ord. 152”), §§ 4–5.) Proceeds of the
25 charge “may only be used to fund District water supply activities, including capital acquisition and
26 operational costs for Aquifer Storage and Recovery (ASR) and Groundwater Replenishment (GWR)
27 purposes” (*Id.*, § 3.) It may also fund indirect costs of water supply, including securing and
28 managing supplemental supplies for a water-scarce region. (*Ibid.*)

1 In compliance with Proposition 218, the District’s Board notified affected property owners of
2 the proposed fee and held multiple hearings to address residents’ concerns before approving it. The
3 District created a Citizen Oversight Panel, limited the use of fee proceeds for unallocated
4 administrative overhead to 15 percent of revenues, and established a policy that the charge should be
5 suspended when no longer needed to achieve the ordinance’s purpose. (Ord. 152, §§ 3, 9, 10.) The
6 District must annually hold a public hearing in connection with its budget to review fees collected
7 and spent to achieve the purposes of the Water Supply Charge, and to suspend or reduce the charge if
8 those purposes are accomplished or alternate funds to do so become available. (*Id.*, § 10.)

9 As of 2017 Cal-Am had become “the most expensive water service in the entire United
10 States” (Request for Judicial Notice (“RJN”), Exh. A [Measure J].) At the November 2018
11 general election, voters adopted Measure J, directing the District to acquire Cal-Am’s local assets.
12 (*Ibid.*) This was “to ensure the long-term sustainability, adequacy, reliability, cost-effectiveness and
13 quality of water service within the Monterey Peninsula Water Management District area.” (*Ibid.*) The
14 District subsequently determined the Water Supply Charge could fund acquisition of Cal-Am assets.
15 Cal-Am vigorously opposes the effort.

16 As Ordinance 152 requires, the District annually reviews the Water Supply Charge along
17 with its budget to determine if the Water Supply Charge is still needed, most recently in June 2021.
18 (RJN, Exh. B [FY 2021–2022 budget]; Exh. C [Resolution 2021-05].) In June, the District found
19 both the User Fee and Water Supply Charge are needed to serve Ordinance 152’s purposes,
20 approving a budget requiring it to draw on reserves, so it might “maintain its service levels ... and
21 sustain its ability to achieve the objectives in the District’s Strategic Plan” (RJN, Exh. B, p. 5.)
22 MPTA appeared and requested the District suspend both the User Fee and Water Supply Charge, but
23 does not seek review of that action here. (RJN, Exhs. E & F [May 27 & June 21, 2021 meeting
24 transcripts].) Instead, MPTA filed a claim on August 30, 2021 and this Petition on September 28,
25 2021. MPTA alleges the District violates Proposition 218 and Ordinance 152 by collecting both the
26 User Fee and Water Supply Charge, and seeks a writ of mandate and declaratory relief directing the
27 District to suspend or reduce the Water Supply Charge. (Pet., ¶¶ 26–36.)
28

1 **III. STANDARD ON DEMURRER**

2 The standards on demurrer are familiar and can be briefly stated: A defendant may demur
3 when 1) the court lacks jurisdiction, 2) a complaint or cause of action fails to allege facts sufficient
4 to constitute a cause of action, or 3) a complaint is uncertain, ambiguous or unintelligible. (Code Civ.
5 Proc., § 430.10, subds. (a), (e), (f).) A demurrer tests a complaint’s legal sufficiency, accepting as
6 true all facts properly pled or subject to judicial notice. (*Writers Guild of Am., Inc. v. City of Los*
7 *Angeles* (2000) 77 Cal.App.4th 475, 477.) However, a court does not assume the truth of
8 contentions, deductions, or conclusions of fact or law. (*Ellenberger v. Espinosa* (1994) 30
9 Cal.App.4th 943, 947.) It disregards allegations contrary to law or judicially noticeable fact.
10 (*Planning & Cons. League v. Castaic Lake Water Agency* (2010) 180 Cal.App.4th 210, 225–226
11 (*Castaic Lake*).) Demurrer is appropriate if grounds appear from a pleading’s allegations. (Code Civ.
12 Proc., § 430.10, subd. (a).) Leave to amend is properly denied if amendment would be futile.
13 (*Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 230.)

14 **IV. ARGUMENT**

15 **A. The Court Lacks Jurisdiction**

16 **I. Challengers failed to timely sue in validation**

17 Code of Civil Procedure section 860 allows a public agency to bring a validation action “to
18 determine the validity” of its own action. If it does not, “any interested person” may bring a similar
19 action (a “reverse validation” action) within 60 days of a challenged action. (Code Civ. Pro., § 863.)
20 Absent a timely validation challenge, an action subject to validation is forever immune from attack
21 “whether it is legally valid or not.” (*McLeod v. Vista Unified Sch. Dist.* (2008) 158 Cal.App.4th
22 1156, 1166.) The running of time for a validation (or reverse validation) action has the preclusive
23 effect of a judgment — the validation statutes are statutes of repose as well as limitations.
24 (*Embarcadero Municipal Improvement Dist. v. County of Santa Barbara* (2001) 88 Cal.App.4th 781,
25 792 (“*EMID*”) [no distinction between cases in which validation judgment enters and those in which
26 time for validation has run].)

27 Section 412 of the District Law requires “[a]ny action to determine the validity of any
28 contract, any bonds, notes, or other evidences of indebtedness, or the levy of a special **assessment**

1 shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the
2 Code of Civil Procedure.” (Emphasis added.) The Water Supply Charge is subject to validation as
3 such an assessment. *Coachella Valley Water District v. Superior Court of Riverside County* (2021) 61
4 Cal.App.5th 755, 770 (“*Coachella Valley*”) freshly concludes that a revenue measure collected via
5 the property tax roll is an assessment within the meaning of Water Code section 30066, which states:
6 “An action to determine the validity of an **assessment**, or of warrants, contracts, obligations, or
7 evidences of indebtedness pursuant to this division may be brought pursuant to Chapter 9
8 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.” (Emphasis
9 added.) That statute is substantively the same as section 412 of the District Law and the outcome
10 should therefore be the same here. If MPTA is to challenge the District’s decision to annually levy
11 the Water Supply Charge, it must timely do so in validation. As the charge was most recently levied
12 in June, and this suit filed — not in validation — in September, it is time-barred.

13 The Petition challenges the District’s continued collection of the full amount of the Water
14 Supply Charge. (Pet., ¶¶ 24–36.) It alleges the District had a ministerial duty under Ordinance 152 to
15 end or reduce the Water Supply Charge once the User Fee was collected again. (*Id.*, ¶¶ 24–29.) It
16 also states the continued collection of the Water Supply Charge violates Proposition 218. (*Ibid.*)

17 Vague as to what act it challenges, the Petition states “[t]he District is violating Ordinance
18 No. 152 each time it imposes the Water Supply Charge on property tax bills,” which, of course, is an
19 annual event. (*Id.*, ¶ 24; Ord. 152, § 4.) While ambiguous, the Petition must necessarily attack either
20 or both of two annual legislative acts. First is the adoption of the budget, when the District must
21 “review amounts collected and expended in relation to the purposes for which the charge is
22 imposed” and end the Water Supply Charge if those purposes are met or “alternative funds are
23 available via a charge collected on the California American Water Company bill.” (Ord. 152, § 10.)
24 The District most recently approved its budget by Resolution 2021-05 on June 21, 2021, at which
25 time it considered the need for continued collection of the Water Supply Charge. (RJN, Exh. B [FY
26 2021–2022 budget]; Exh. C [Resolution 2021-05]; Exh. E [May 27, 2021 transcript]; Exh. F
27 [June 21, 2021 transcript].) Second is the District’s annual resolution placing the Water Supply
28 Charge on the tax roll. (Ord. 152, § 4.) The most recent such resolution, Resolution 2021–06, was

1 adopted with the budget on June 21, 2021. (RJN, Exh. D [Resolution 2021-06].)

2 The District Law authorizes the District to “levy and collect taxes and **assessments** upon land
3 and improvements to land within the district for the purposes of carrying on the operations and
4 paying the obligations of the district” (Wat. Code App. § 118-306, emphasis added.) This is akin
5 to Water Code section 31702.3, construed in *Coachella Valley*, which states:

6 On or before September 1 of each year, the board shall fix the rates of taxation in not
7 to exceed four decimals, which it shall require for each of its purposes for said year,
8 making due allowance for delinquency as fixed by law or by the board, and
9 immediately certify said rates to the county auditor. These acts by the board are a
10 valid **assessment** of the property and a valid levy of the taxes so fixed.

11 (Emphasis added.) Thus, the Water Supply Charge is an “assessment” within section 118-306 of the
12 District Law just as the tax in *Coachella Valley* was and both can be challenged only in validation.

13 The Petition is therefore substantively- and time-barred because it was not brought in
14 validation within 60 days of the June 21, 2021 resolutions approving the budget and placing the
15 Water Supply Charge on the tax roll. (Cal. Civ. Proc., §§ 860, 863.) Time for challenge ran
16 August 20, 2021. MPTA submitted its initial claim 10 days later and sued September 28, 2021.
17 MPTA’s tardy pursuit of these claims strips this Court of jurisdiction. (E.g., *EMID, supra*, 88
18 Cal.App.4th at p. 792 [failure to timely sue in validation has the preclusive effect of judgment];
19 *Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 842 [“The validating statutes should be
20 construed to uphold their purpose, i.e., ‘the acting agency’s need to settle promptly all questions
21 about the validity of its action’”].)

22 2. Challengers failed to exhaust administrative remedies

23 MPTA fails to allege it exhausted administrative remedies pre-suit. Exhaustion is a
24 fundamental requirement of judicial review, which may not proceed in its absence. (*California*
25 *Correctional Peace Officers Assn. v. State Personnel Board* (1995) 10 Cal.4th 1133, 1151; *Campbell*
26 *v. Regents of University of California* (2005) 35 Cal.4th 311, 321.) “Administrative agencies must be
27 given the opportunity to reach a reasoned and final conclusion on each and every issue upon which
28 they have jurisdiction to act before those issues are raised in a judicial forum.” (*Sierra Club v. San*

1 *Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489, 510.) Plaintiffs must plead facts
2 showing exhaustion or face dismissal on demurrer. (*Logan v. Southern Cal. Rapid Transit Dist.*
3 (1982) 136 Cal.App.3d 116, 124 [duty to plead exhaustion]; *Pan Pacific Properties, Inc. v. County of*
4 *Santa Cruz* (1978) 81 Cal.App.3d 244, 251 [conclusionary statement appellants “exhausted their
5 administrative remedies” insufficient].) MPTA does not.

6 Before suit, one opposing a tax or fee must present any objections at the public hearing called
7 for that purpose — so-called “issue exhaustion.” (*Hill RHF Housing Partners, L.P. v. City of Los*
8 *Angeles* (2020) 51 Cal.App.5th 621, 632–634, review granted Sep. 16, 2020 (“*Hill RHF*”).) In *Hill*
9 *RHF*, operators of low-income housing sued to invalidate two business improvement districts and
10 their associated assessments on real property to fund supplemental municipal services. (*Id.* at
11 p. 626.) The trial court ruled for the respondent city and assessing districts on the merits. The Court
12 of Appeal affirmed, concluding the plaintiffs were required to exhaust administrative remedies by
13 raising their objections, including the specific issues on which they would later sue, during the city’s
14 hearings. (*Id.* at pp. 633–634.)

15 Here, MPTA asserts the District had to retire the Water Supply Charge when the User Fee
16 was restored in 2016. But Ordinance 152 provides for annual review of the need for the charge, at a
17 public hearing, when the District Board considers its budget. (Ord. 152, § 10.) MPTA was therefore
18 required to present its objections — identifying the issues it would litigate — during the District
19 Board’s May 27, 2021 budget workshop or upon its June 21, 2021 budget adoption. (RJN, Exhs. E
20 & F.) It did not. Because MPTA failed to exhaust its remedies (or even allege doing so), this Court
21 lacks jurisdiction. (*Wallich’s Ranch Co. v. Kern County Pest Control Dist.* (2001) 87 Cal.App.4th
22 878, 885 [affirming judgment for agency in assessment challenge for failure to exhaust].)

23 **B. The Causes of Action Fail To State a Claim**

24 Exhaustion and validation aside, neither MPTA’s claim under Ordinance 152 nor that under
25 Proposition 218 states a cause of action. However, should the Court find the Petition states a cause of
26 action as to one, but not the other, the District requests it grant the accompanying motion to strike.
27
28

1 **I. Maintaining the Water Supply Charge does not impose, extend or**
2 **increase a tax so as to trigger Proposition 218**

3 Proposition 218 forbids local governments from imposing, extending, or increasing any tax
4 without voter approval. (Cal. Const., art. XIII C, § 2.) A tax is imposed when first enacted.
5 (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 944.) A tax is “extended”
6 when an agency lengthens the time in which it applies. (Gov. Code, § 53750, subd. (e); *Greene v.*
7 *Marin County Flood Control & Water Conservation Dist.* (2010) 49 Cal.4th 277, 291 [Prop. 218
8 Omnibus Implementation Act good authority to construe Prop. 218].) A tax is “increased” when an
9 agency revises its methodology for calculating a tax so as to increase taxes on any person or parcel.
10 (Gov. Code, § 53750, subd. (h)(1); *Webb v. City of Riverside* (2018) 23 Cal.App.5th 244, 258.)
11 Maintaining the Water Supply Charge at existing rates does none of these. Thus, Proposition 218 has
12 no application here. (Cf. *Webb, supra*, 23 Cal.App.5th at p. 259 [increasing general fund transfer
13 from electric utility, but not increasing power rates, did not trigger art. XIII C].)

14 Nor does the mere failure to rescind the Water Supply Charge “extend” it within the meaning
15 of Proposition 218. To extend a tax “means a decision by an agency to extend the stated effective
16 period for the tax or fee or charge, including, but not limited to, amendment or removal of a sunset
17 provision or expiration date.” (Gov. Code, § 53750, subd. (e).) The District neither amended
18 Ordinance 152 nor removed a sunset provision, and did not lengthen the Water Supply Charge’s
19 effective period for no such period is stated in the ordinance. Rather, the District has determined
20 annually since Ordinance 152 was adopted, at public hearings, that the “purpose of the charge is still
21 required, and the amount of the charge is still appropriate and less than the proportionate cost of the
22 service attributable to each parcel on which the charge is imposed.” (Ord. 152, § 10; RJN Ex. B
23 [FY 21-22 Budget].)

24 **2. Ordinance 152 imposes no mandatory duty a writ may enforce**

25 Ordinance 152 does not say that the Water Supply Charge must be rescinded when User Fee
26 revenues are restored. If it meant that, it would use much simpler language. Instead, it requires the
27 Board to take a publicly accountable action each year whether to maintain the fee by finding its
28 proceeds are necessary to achieve the ordinance’s water supply purposes. (Ord. 152, § 10.) This

1 Court, of course, may not rewrite Ordinance 152 to serve MPTA’s policy preferences. MPTA claims
2 entitlement to a writ because the District has a clear, present and ministerial duty to retire all or part
3 of the Water Supply Charge and to have a clear, present and beneficial interest in the performance of
4 that obligation. (Pet. ¶¶ 27, 28, 30.) Not so.

5 MPTA misreads Ordinance 152. It does not require a reduction in the Water Supply Charge
6 for every dollar of User Fees collected. True, section 10, subdivision (C) does state: “the District
7 shall not collect a water supply charge pursuant to this Ordinance ... to the extent alternative funds
8 are available via a charge collected on the California American Water Company bill” (Ord. 152,
9 § 10, subd (C).) But this must be read in context. (E.g., *Issakhani v. Shadow Glen Homeowners*
10 *Assn., Inc.* (2021) 63 Cal.App.5th 917, 931 [ordinance read as a whole].) Section 10, subdivision (B)
11 states the “District shall require the annual water supply charge to sunset in full or in part **unless** the
12 Board determines that the purpose of the charge is still required, and the amount of the charge is still
13 appropriate and less than the proportionate cost of the service attributable to each parcel on which
14 the charge is imposed.” (Ord. 152, § 10, subd (B) [emphasis added].)

15 These are policy judgments, not the kind of bright line rules that justify rare judicial
16 intervention in the inherently political, legislative process of budgeting. (Cf. *Scott v. Common*
17 *Council* (1996) 44 Cal.App.4th 684, 688–689 [court could require funding of statutorily mandated
18 positions in City Attorney’s Office, but could not otherwise control budget]; *County of Butte v.*
19 *Superior Court* (1985) 176 Cal.App.3d 693 [no judicial power to prevent cuts to Sheriff’s budget].)
20 *Scott* quotes the earlier case on this aspect of the separation of powers:

21 The budgetary process entails a complex balancing of public needs in many and
22 varied areas with the finite financial resources available for distribution among those
23 demands. It involves interdependent political, social and economic judgments which
24 cannot be left to individual officers acting in isolation; rather, it is, and indeed must
25 be, the responsibility of the legislative body to weigh those needs and set priorities for
26 the utilization of the limited revenues available.” (*County of Butte v. Superior Court,*
27 *supra*, 176 Cal.App.3d 693, 699, 222 Cal.Rptr. 429.) We agree.
28 (*Scott, supra*, 44 Cal.App.4th at p. 692.) Ordinance 152 provides that, if the District Board

1 determines — under standards not fit for enforcement by writ — that the Water Supply
2 Charge and the User Fee are both needed to achieve the ordinance’s objectives, the District
3 need not terminate the charge. (Ord. 152, § 10, subd. (B).)

4 The District Board discussed at its May 27, 2021 budget workshop whether both fees were
5 needed to fulfill Ordinance 152’s purpose and that, even maintaining both, the District needed to
6 draw on reserves to balance its budget, given the predicted demands of Measure J, the expensive
7 dispute with Cal-Am, and the District’s other water supply efforts. (RJN, Exh. E, 7:12–9:20 [May
8 27, 2021 transcript].) MPTA does not challenge this determination; rather it misreads Ordinance 152
9 to compel the Board to rescind the Ordinance when the User Fee was restored in 2016 (though it
10 sues some five years later). (Pet., ¶ 24). This interpretation is wrong as a matter of law and can be
11 rejected on demurrer. (Cf. *Coachella Valley, supra*, 61 Cal.App.5th 755, 770 [issuing appellate writ
12 to reverse order overruling demurrer on non-validation challenge to water revenue on tax roll].)

13 Were Ordinance 152 ambiguous (it is not), the District’s interpretation of its own laws is
14 entitled to some deference. Although courts are the “ultimate arbiters of the construction of a
15 statute,” they afford some deference to governments construing their own legislation. (*San Francisco*
16 *Fire Fighters Local 798 v. City and County of San Francisco* (2006) 38 Cal.4th 653, 667.) “The
17 courts exercise limited review of legislative acts by administrative bodies out of deference to the
18 separation of powers between the Legislature and the judiciary, to the legislative delegation of
19 administrative authority to the agency, and to the presumed expertise of the agency within its scope
20 of authority.” (*California Hotel & Motel Assn. v. Industrial Welfare Com.* (1979) 25 Cal.3d 200,
21 211–212.) Both causes of action should be dismissed without leave to amend.

22 **C. The Declaratory Relief Claim Duplicates the Writ**

23 The second cause of action, for declaratory relief (Pet., ¶¶ 33–36), fails for the reasons noted
24 above, and for one other. Because traditional mandate relief is pleaded, declaratory relief may not be.
25 (*Pasadena v. Cohen* (2014) 228 Cal.App.4th 1461, 1467 [declaratory relief cannot be joined with
26 writ claim]; *Center for Biological Diversity v. California Dept. of Forestry and Fire Protection*
27 (2014) 232 Cal.App.4th 931, 951 & fn. 27 [no entitlement to declaratory relief in traditional
28 mandate]; *Mental Health Assn. in California v. Schwarzenegger* (2010) 190 Cal.App.4th 952, 959

1 [declaratory and injunctive relief claims “redundant” of traditional writ].) The rationale for the rule is
2 plain — otherwise, it would be easy to plead around procedural limitations on writ litigation
3 imposed to serve the separation of powers and judicial efficiency — like the litigation-on-the-record
4 rule of *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559 and the concomitant
5 preclusion of discovery. (*San Joaquin County Local Agency Formation Commission v. Superior*
6 *Court* (2008) 162 Cal.App.4th 159, 170-172.) The second cause of action should therefore be
7 dismissed for this independent reason.

8 **D. MPTA’s Petition Is Uncertain, Unintelligible and Ambiguous**

9 California Rules of Court, rule 2.112(2) requires plaintiffs to “specifically state” the “nature”
10 of each cause of action they plead. A complaint must set forth sufficient facts so a defendant may
11 intelligently respond to the charges against it. (*Zumbrun v. University of Southern California* (1972)
12 25 Cal.App.3d 1, 8 (*Zumbrun*)). Demurrer for uncertainty lies if failing to label the parties and
13 claims renders a complaint so confusing the defendant cannot determine to what he or she must
14 respond. (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, n. 2.) “[T]he
15 purpose of a complaint is to furnish the defendants with certain definite charges which can be
16 intelligently met. ... The point is that the accuser must place his finger squarely and directly upon
17 whatever dereliction is relied upon.” (*Zumbrun, supra*, 25 Cal.App.3d at p. 8.)

18 Here, MPTA alleges the District violated Proposition 218 and Ordinance 152 by not reducing
19 or terminating the Water Supply Charge in proportion to the User Fee revenue collected. However,
20 MPTA does not identify the action it contests, leaving the District to guess. Should MPTA be
21 allowed to replead its Petition — it should not, for the reasons discussed above — then it should be
22 directed to plead with specificity what act or acts of the District’s Board it contests.

23 **V. CONCLUSION**

24 This is a policy dispute about how much the District should raise from its customers to
25 ensure the future of the Monterey Peninsula’s water supply. It should be resolved in the political
26 sphere, as MPTA can cite no law that authorizes the Court to interfere in the legislative process of
27 budgeting for District services. Proposition 218 is not triggered by maintaining an existing fee and
28 Ordinance 152 allows the very decision-making — with public participation and political

1 accountability — that occurred here. Therefore, this Court should sustain the demurrer without leave
2 to amend. If leave is granted, the Court should instruct MPTA to state specifically in an amended
3 pleading what action of the District it challenges, how MPTA exhausted remedies as to its challenge,
4 and what law justifies the relief it seeks.

5 Alternatively, the Court should grant the accompanying motion to strike to excise those legal
6 theories the Petition alleges which cannot be supported on the law.

7 DATED: November 1, 2021

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**

Matthew Slentz

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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

I, Lourdes Hernandez, declare:

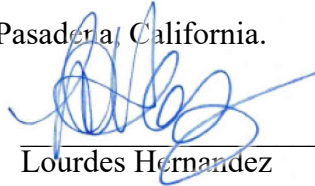
I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91101-2109. My email address is: LHernandez@chwlaw.us. On November 2, 2021, I served the document(s) described as **MONTEREY PENINSULA WATER MANAGEMENT DISTRICT'S DEMURRER TO MONTEREY PENINSULA TAXPAYERS' ASSOCIATION'S PETITION AND COMPLAINT** on the interested parties in this action addressed as follows:

SEE ATTACHED SERVICE LIST

- BY MAIL:** The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.
- 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 November 2, 2021, from e-mail address: LHernandez@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 November 2, 2021, at Pasadena, California.



Lourdes Hernandez

Colantuono, Highsmith & Whitley, PC
790 E. COLORADO BOULEVARD, SUITE 850
PASADENA, CA 91101-2109

SERVICE LIST

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

Monterey Superior Court Case No.: 21CV003066

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

7 Attorneys for Respondent
The Monterey Peninsula Water Management District
8

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

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

15 Petitioners and Plaintiffs,

16 v.

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

20 Respondents and Defendants.
21

CASE NO. 21 CV 003066
Unlimited Jurisdiction

(Case assigned to Hon. Marla O. Anderson)
Dept 14

**MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT'S NOTICE
OF MOTION AND MOTION TO
STRIKE PORTIONS OF MONTEREY
PENINSULA TAXPAYERS'
ASSOCIATION'S PETITION AND
COMPLAINT**

Complaint Filed: September 28, 2021

Hearing Date: December 17, 2021

Time: 9:00 a.m.

Dept.: 14

Colantuono, Highsmith & Whatley, PC
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SONOMA, CA 95476

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 17, 2021 at 9:00 a.m., or as soon thereafter as
3 counsel may be heard in Department 14 of the above-mentioned Court, at 1200 Aguajito Road,
4 Monterey, CA 93940, Defendant and Respondent Monterey Peninsula Water Management District
5 (“District”) will and hereby does move to strike these portions of Plaintiffs and Petitioners Monterey
6 Peninsula Taxpayers’ Association, Inc., and Richards J. Heuer III’s (together, “MPTA”) Verified
7 Petition for Writ of Mandate and Complaint for Declaratory Relief (“Petition”):

- 8 1) Paragraph 1: “Section 10 of Ordinance No. 152 requires the District to reduce the Water
9 Supply Charge in the event it reinstated a User Fee it previously collected through
10 California-American Water Company” and “Petitioners seek a writ of mandate and
11 related relief commanding the District to cease the further collection of the Water Supply
12 Charge (or to reduce it by the amount of the User Fee) because continued collection of
13 the charge violates Ordinance No. 152 and Proposition 218.”
- 14 2) Paragraph 18: “then the amount collected via the Water Supply Charge would be reduced
15 pro rata from the fees collected from Cal-Am’s bills.”
- 16 3) Paragraph 19: “The District has no discretion to disregard Ordinance No. 152, section
17 10’s provisions.”
- 18 4) Paragraph 23: “in direct violation of the Ordinance No. 152 sunset provision codified in
19 section 10.”
- 20 5) Paragraph 24 in its entirety.
- 21 6) Paragraph 25: “By not reducing the Water Supply Charge by the amount of the User Fee,
22 the revenue from the Water Supply Charge is necessarily being utilized for purposes other
23 than that for which fee or charge was imposed in violation of article XIII D, section 6,
24 subdivision (b)(2).”
- 25 7) Paragraph 27 in its entirety.
- 26 8) Paragraph 28 in its entirety.
- 27 9) Paragraph 29 in its entirety.
- 28 10) Paragraph 30 in its entirety.

- 1 11) Paragraph 32 in its entirety.
- 2 12) Paragraph 34 in its entirety.
- 3 13) Paragraph 36 in its entirety.
- 4 14) Prayer for Relief, Paragraph 1 in its entirety.
- 5 15) Prayer for Relief, Paragraph 2 in its entirety.

6 This motion is made on the grounds that these portions of the Petition are irrelevant,
7 improper, and not in conformance with the law and should therefore be struck under Code of Civil
8 Procedure section 436.

9 The District's motion is based on this notice and motion, the attached memorandum, the
10 accompanying Request for Judicial Notice and Declaration of Matthew C. Slentz, the District's
11 Demurrer filed herewith, the records of this case, and such arguments and evidence as the District
12 may present at or before the hearing.

13 DATED: November 1, 2021

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**

Matthew Slentz

MICHAEL G. COLANTUONO
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CONOR W. HARKINS
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County of Butte v. Superior Court
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Greene v. Marin County Flood Control & Water Conservation Dist.
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Issakhani v. Shadow Glen Homeowners Assn., Inc.
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 (2018) 23 Cal.App.5th 24410

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California Constitution, Article XIII D, § 6, subd. (b)(2)2

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1 **I. INTRODUCTION**

2 Defendant and Respondent Monterey Peninsula Water Management District (“District”)
3 moves to strike portions of Plaintiffs and Petitioners Monterey Peninsula Taxpayers’ Association,
4 Inc.’s, and Richards J. Heuer III’s (together, “MPTA”) Verified Petition for Writ of Mandate and
5 Complaint for Declaratory Relief (“Petition”) as an alternative if the Court does not sustain the
6 accompanying demurrer in its entirety.

7 MPTA seek remedies unauthorized by law. The District did not impose, increase or extend
8 Ordinance 152’s Water Supply Charge by continuing to collect that charge and its User Fee on Cal-
9 Am’s bill. Accordingly, there can be no Proposition 218 violation. And Ordinance 152 does not
10 impose a ministerial duty on the District to retire the Water Supply Charge when it resumed
11 collection of the User Fee, but rather an annual review of the need for the Charge.

12 **II. STATEMENT OF FACTS¹**

13 This is not the first lawsuit between MPTA and the District over the District’s collection of
14 the Water Supply Charge. The Water Supply Charge is discussed at length in *Monterey Peninsula*
15 *Taxpayers’ Association v. Board of Directors of Monterey Peninsula Water Management District*
16 (Cal. Ct. App., Apr. 11, 2018, No. H042484) 2018 WL 1736826, at *1–4.

17 The Monterey Peninsula Water Management District Law (“District Law”), enacted in 1977
18 created the District to address the Legislature’s concern that “water problems in the Monterey
19 Peninsula area require integrated management” and the “need for conserving and augmenting the
20 supplies of water by integrated management of ground and surface water supplies, for control and
21 conservation of storm and wastewater, and for promotion of the reuse and reclamation of water.”
22 (Wat. Code App. (West’s) § 118–2.) The District Law broadly empowers the District “to do any and
23 every lawful act necessary in order that sufficient water may be available for any present or future
24 beneficial use or uses of the lands or inhabitants within the district, including, but not limited to,
25 irrigation, domestic, fire protection, municipal, commercial, industrial, recreational, and all other
26 beneficial uses and purposes.” (*Id.*, § 118–325.) This includes power to “levy and collect taxes and
27
28

¹ This Statement of Facts is identical to that included in the accompanying demurrer.

1 assessments upon land and improvements to land within the district for the purposes of carrying on
2 the operations and paying the obligations of the district" (*Id.*, § 118-306.)

3 California-American Water Company ("Cal-Am") is an investor-owned utility supplying
4 water to the Monterey Peninsula. (See *Monterey Peninsula Water Management Dist. v. Public*
5 *Utilities Com.* (2016) 62 Cal.4th 693 (*MPWMD v. PUC*); *California American Water v. City of*
6 *Seaside* (2010) 183 Cal.App.4th 471, 473.) The District collaborates with Cal-Am to maintain and
7 augment area water supplies. Historically, the District's primary funding source was a "User Fee"
8 collected on Cal-Am water bills, which accounted for 46 percent of District annual revenues before
9 it was discontinued. In 2011, however, the PUC ordered Cal-Am to suspend User Fee collection.
10 (*MPWMD v. PUC, supra*, 62 Cal.4th at p. 697.) Our Supreme Court overturned that decision. (*Id.* at
11 p. 702.) The District began receiving the User Fee again in 2016.

12 In 2012, while Supreme Court review was pending, the District adopted Ordinance 152 to
13 funds its services. Ordinance 152 imposes an annual "Water Supply Charge" on property connected
14 to the main Cal-Am water distribution system. (Pet., Exh. A ("Ord. 152"), §§ 4-5.) Proceeds of the
15 charge "may only be used to fund District water supply activities, including capital acquisition and
16 operational costs for Aquifer Storage and Recovery (ASR) and Groundwater Replenishment (GWR)
17 purposes" (*Id.*, § 3.) It may also fund indirect costs of water supply, including securing and
18 managing supplemental supplies for a water-scarce region. (*Ibid.*)

19 In compliance with Proposition 218, the District's Board notified affected property owners of
20 the proposed fee and held multiple hearings to address residents' concerns before approving it. The
21 District created a Citizen Oversight Panel, limited the use of fee proceeds for unallocated
22 administrative overhead to 15 percent of revenues, and established a policy that the charge should be
23 suspended when no longer needed to achieve the ordinance's purpose. (Ord. 152, §§ 3, 9, 10.) The
24 District must annually hold a public hearing in connection with its budget to review fees collected
25 and spent to achieve the purposes of the Water Supply Charge, and to suspend or reduce the charge if
26 those purposes are accomplished or alternate funds to do so become available. (*Id.*, § 10.)

27 As of 2017 Cal-Am had become "the most expensive water service in the entire United
28 States" (Request for Judicial Notice ("RJN"), Exh. A [Measure J].) At the November 2018

1 general election, voters adopted Measure J, directing the District to acquire Cal-Am’s local assets.
2 (*Ibid.*) This was “to ensure the long-term sustainability, adequacy, reliability, cost-effectiveness and
3 quality of water service within the Monterey Peninsula Water Management District area.” (*Ibid.*) The
4 District subsequently determined the Water Supply Charge could fund acquisition of Cal-Am assets.
5 Cal-Am vigorously opposes the effort.

6 As Ordinance 152 requires, the District annually reviews the Water Supply Charge along
7 with its budget to determine if the Water Supply Charge is still needed, most recently in June 2021.
8 (RJN, Exh. B [FY 2021–2022 budget]; Exh. C [Resolution 2021-05].) In June, the District found
9 both the User Fee and Water Supply Charge are needed to serve Ordinance 152’s purposes,
10 approving a budget requiring it to draw on reserves, so it might “maintain its service levels ... and
11 sustain its ability to achieve the objectives in the District’s Strategic Plan” (RJN, Exh. B, p. 5.)
12 MPTA appeared and requested the District suspend both the User Fee and Water Supply Charge, but
13 does not seek review of that action here. (RJN, Exhs. E & F [May 27 & June 21, 2021 meeting
14 transcripts].) Instead, MPTA filed a claim on August 30, 2021 and this Petition on September 28,
15 2021. MPTA alleges the District violates Proposition 218 and Ordinance 152 by collecting both the
16 User Fee and Water Supply Charge, and seeks a writ of mandate and declaratory relief directing the
17 District to suspend or reduce the Water Supply Charge. (Pet., ¶¶ 26–36.)

18 **III. ARGUMENT**

19 **A. The Court may strike the Petition’s substantive defects**

20 On a motion under Code of Civil Procedure section 435, subdivision (b)(1), a court may
21 strike all or part of a pleading that is irrelevant, false, improper, or not drawn or filed in conformity
22 with law, court rules, or court order. (Code Civ. Proc., § 436.) Such a motion is proper when a defect
23 affects only part of the complaint, “such as a violation of the applicable statute of limitations or a
24 purported claim of right which is legally invalid.” (*PH II, Inc. v. Superior Court* (1995) 33
25 Cal.App.4th 1680, 1683.) The Court may also strike “irrelevant matter,” including allegations not
26 essential to a claim; those neither pertinent to, nor supported by, an otherwise sufficient claim; and a
27 prayer for relief not supported by the allegations. (Code Civ. Proc., § 431.10, subd. (b).)
28

1 Here, the District moves to strike two sets of allegations from the Complaint: 1) that the
2 continued collection of both the Water Supply Charge and the User Fee violates Proposition 218, and
3 2) that the District had a ministerial duty to retire some or all of the Water Supply Charge once User
4 Fee revenue became available (in 2016).

5 **B. Maintaining the Water Supply Charge does not impose, extend or**
6 **increase a tax so as to trigger Proposition 218²**

7 Proposition 218 forbids local governments from imposing, extending, or increasing any tax
8 without voter approval. (Cal. Const., art. XIII C, § 2.) A tax is imposed when first enacted.
9 (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 944.) A tax is “extended”
10 when an agency lengthens the time period during which it applies. (Gov. Code, § 53750, subd. (e);
11 *Greene v. Marin County Flood Control & Water Conservation Dist.* (2010) 49 Cal.4th 277, 291
12 [Prop. 218 Omnibus Implementation Act good authority to construe Prop. 218].) A tax is “increased”
13 when an agency revises its methodology for calculating a tax so as to increase taxes levied on any
14 person or parcel. (Gov. Code, § 53750, subd. (h)(1); *Webb v. City of Riverside* (2018) 23 Cal.App.5th
15 244, 258.) Maintaining the Water Supply Charge at existing rates does none of these. Thus,
16 Proposition 218 has no application here. (Cf. *Webb, supra*, 23 Cal.App.5th at p. 259 [increasing
17 general fund transfer from electric utility, but not increasing power rates, did not trigger art. XIII C].)

18 Nor does the mere failure to rescind the Water Supply Charge “extend” it within the meaning
19 of Proposition 218. To extend a tax “means a decision by an agency to extend the stated effective
20 period for the tax or fee or charge, including, but not limited to, amendment or removal of a sunset
21 provision or expiration date.” (Gov. Code, § 53750, subd. (e).) The District neither amended
22 Ordinance 152 nor removed a sunset provision, and did not lengthen the Water Supply Charge’s
23 effective period, for the ordinance states none. Rather, the District has determined annually since
24 Ordinance 152 was adopted, at public hearings, that the “purpose of the charge is still required, and
25 the amount of the charge is still appropriate and less than the proportionate cost of the service
26 attributable to each parcel on which the charge is imposed.” (Ord. 152, § 10; RJN Exh. B [FY 21-22
27
28

² This argument mirrors that presented at page 16 of the Demurrer.

1 Budget].) Accordingly, allegations that the District violated Proposition 218 by continuing to collect
2 the Water Supply Charge should be struck.

3 This argument applies to allegations in the Petition paragraphs 1, 25, 27, 29, 30, 32, 34
4 and 36, and Paragraph 2 of its Prayer for Relief, identified in the Notice *supra*.

5 **C. Ordinance 152 imposes no mandatory duty a writ may enforce³**

6 Ordinance 152 does not say that the Water Supply Charge must be rescinded when User Fee
7 revenues are restored. If it meant that, it would use much simpler language. Instead, it requires the
8 Board to take a publicly accountable action each year whether to maintain the fee by finding its
9 proceeds are necessary to achieve the ordinance’s water supply purposes. (Ord. 152, § 10.) This
10 Court, of course, may not rewrite Ordinance 152 to serve MPTA’s policy preferences. MPTA claims
11 entitlement to a writ because the District has a clear, present and ministerial duty to retire all or part
12 of the Water Supply Charge and to have a clear, present and beneficial interest in the performance of
13 that obligation. (Pet. ¶¶ 27, 28, 30.) Not so.

14 MPTA misreads Ordinance 152. It does not require a reduction in the Water Supply Charge
15 for every dollar of User Fees collected. True, section 10, subdivision (C) does state: “the District
16 shall not collect a water supply charge pursuant to this Ordinance ... to the extent alternative funds
17 are available via a charge collected on the California American Water Company bill” (Ord. 152,
18 § 10, subd (C).) But this must be read in context. (E.g., *Issakhani v. Shadow Glen Homeowners*
19 *Assn., Inc.* (2021) 63 Cal.App.5th 917, 931 [ordinance read as a whole].) Section 10, subdivision (B)
20 states the “District shall require the annual water supply charge to sunset in full or in part **unless** the
21 Board determines that the purpose of the charge is still required, and the amount of the charge is still
22 appropriate and less than the proportionate cost of the service attributable to each parcel on which
23 the charge is imposed.” (Ord. 152, § 10, subd (B) [emphasis added].)

24 These are policy judgments, not the kind of bright line rules that justify rare judicial
25 intervention in the inherently political, legislative process of budgeting. (Cf. *Scott v. Common*
26 *Council* (1996) 44 Cal.App.4th 684, 688–689 [court could require funding of statutorily mandated
27 positions in City Attorney’s Office, but could not otherwise control budget]; *County of Butte v.*
28 _____

³ This argument mirrors that age pages 16 to 17 of the Demurrer.

1 *Superior Court* (1985) 176 Cal.App.3d 693 [no judicial power to prevent cuts to Sheriff’s budget].)

2 *Scott* quotes the earlier case on this aspect of the separation of powers:

3 “The budgetary process entails a complex balancing of public needs in many and
4 varied areas with the finite financial resources available for distribution among those
5 demands. It involves interdependent political, social and economic judgments which
6 cannot be left to individual officers acting in isolation; rather, it is, and indeed must
7 be, the responsibility of the legislative body to weigh those needs and set priorities for
8 the utilization of the limited revenues available.” (*County of Butte v. Superior Court*,
9 *supra*, 176 Cal.App.3d 693, 699, 222 Cal.Rptr. 429.) We agree.

10 (*Scott, supra*, 44 Cal.App.4th at p. 692.) Ordinance 152 provides that, if the District Board
11 determines — under standards not fit for enforcement by writ — that the Water Supply
12 Charge and the User Fee are both needed to achieve the ordinance’s objectives, the District
13 need not terminate the charge. (Ord. 152, § 10, subd. (B).)

14 The District Board discussed at its May 27, 2021 budget workshop whether both fees were
15 needed to fulfill Ordinance 152’s purpose and that, even maintaining both, the District needed to
16 draw on reserves to balance its budget, given the predicted demands of Measure J, the expensive
17 dispute with Cal-Am, and the District’s other water supply efforts. (RJN, Exh. E, 7:12–9:20 [May
18 27, 2021 transcript].) MPTA does not challenge this determination; rather it misreads Ordinance 152
19 to compel the Board to rescind the Ordinance when the User Fee was restored in 2016 (though it
20 sues some five years later). (Pet., ¶ 24). This interpretation is wrong as a matter of law and can be
21 rejected at the pleading stage. (Cf. *Coachella Valley, supra*, 61 Cal.App.5th 755, 770 [issuing
22 appellate writ to reverse order overruling demurrer on non-validation challenge to water revenue on
23 tax roll].)

24 Were Ordinance 152 ambiguous (it is not), the District’s interpretation of its own laws is
25 entitled to some deference. Although courts are the “ultimate arbiters of the construction of a
26 statute,” they afford some deference to governments construing their own legislation. (*San Francisco*
27 *Fire Fighters Local 798 v. City and County of San Francisco* (2006) 38 Cal.4th 653, 667.) “The
28 courts exercise limited review of legislative acts by administrative bodies out of deference to the

1 separation of powers between the Legislature and the judiciary, to the legislative delegation of
2 administrative authority to the agency, and to the presumed expertise of the agency within its scope
3 of authority.” (*California Hotel & Motel Assn. v. Industrial Welfare Com.* (1979) 25 Cal.3d 200,
4 211–212.) Accordingly, allegations that the District was required to terminate or reduce the Water
5 Supply Charge by Ordinance 152 should be struck.

6 This argument applies to allegations in the Petition paragraphs 1, 18, 19, 23, 24, 27, 28, 30,
7 32, 34 and 36, and Paragraphs 1 and 2 of its Prayer for Relief, identified in the Notice *supra*.

8 **IV. CONCLUSION**

9 The District respectfully asks the Court to strike the allegations identified in the Notice,
10 *supra*, if it does not entirely sustain the accompanying demurrer. If the Petition states a viable claim
11 (the Demurrer argues otherwise) the Court, the District, and MPTA will benefit from a better drafted
12 pleading limited to relevant facts and viable claims.

13 DATED: November 1, 2021

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**

Matthew Slentz

16 MICHAEL G. COLANTUONO
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1 **PROOF OF SERVICE**

2 *Monterey Peninsula Taxpayers' Association, Inc., et al. v. The Monterey Peninsula Water*
3 *Management District, et al.*
4 Case No.: 21CV003066

5 I, Lourdes Hernandez, declare:

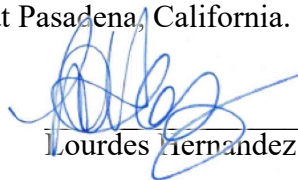
6 I am employed in the County of Los Angeles, State of California. I am over the age of 18
7 and not a party to the within action. My business address is 790 E. Colorado Boulevard, Suite 850,
8 Pasadena, California 91101-2109. My email address is: LHernandez@chwlaw.us. On November 2,
9 2021, I served the document(s) described as **MONTEREY PENINSULA WATER**
10 **MANAGEMENT DISTRICT'S NOTICE OF MOTION AND MOTION TO STRIKE**
11 **PORTIONS OF MONTEREY PENINSULA TAXPAYERS' ASSOCIATION'S PETITION**
12 **AND COMPLAINT** on the interested parties in this action addressed as follows:

13 **SEE ATTACHED SERVICE LIST**

- 14 **BY MAIL:** The envelope was mailed with postage thereon fully prepaid. I am readily
15 familiar with the firm's practice of collection and processing correspondence for mailing.
16 Under that practice it would be deposited with the U.S. Postal Service on that same day with
17 postage thereon fully prepaid at Pasadena, California, in the ordinary course of business. I
18 am aware that on motion of the party served, service is presumed invalid if the postal
19 cancellation date or postage meter date is more than one day after service of deposit for
20 mailing in affidavit.
- 21 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
22 agreement of the parties to accept service by e-mail or electronic transmission, by causing the
23 documents to be sent to the persons at the e-mail addresses listed on the service list on
24 November 2, 2021, from e-mail address: LHernandez@chwlaw.us. No electronic message
25 or other indication that the transmission was unsuccessful was received within a reasonable
26 time after the transmission.

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

Executed on November 2, 2021, at Pasadena, California.


Lourdes Hernandez

Colantuono, Highsmith & Whitley, PC
670 W. NAPA STREET, SUITE F
SONOMA, CA 95476

SERVICE LIST

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

Monterey Superior Court Case No.: 21CV003066

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