This meeting is not subject to
Brown Act noticing requirements.
The agenda is subject to change.

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

Water Supply Planning Committee Members:
Robert S. Brower, Sr. Chair
Jeanne Byrne
Ralph Rubio

Alternate:
Andrew Clarke

Staff Contact
David J. Stoldt, General Manager

After staff reports have been distributed, if additional documents are produced by the District and provided to the Committee regarding any item on the agenda, they will be made available at 5 Harris Court, Building G, Monterey, CA during normal business hours. In addition, such documents may be posted on the District website at mpwmd.net. Documents distributed at the meeting will be made available in the same manner.

AGENDA
Water Supply Planning Committee (current 8/14/18)
Of the Monterey Peninsula Water Management District
****
Tuesday, August 21, 2018, 9 am
MPWMD Conference Room, 5 Harris Court, Bldg. G, Monterey, CA

Call to Order

Comments from Public - *The public may comment on any item within the District's jurisdiction. Please limit your comments to three minutes in length.*

Action Items – *Public comment will be received.*
1. Consider Adoption of February 21, 2018 Committee Meeting Minutes

Discussion Items – *Public comment will be received.*
2. Water Supply Charge and User Fee – Citizen Oversight Panel Discussion

3. Monterey Peninsula Water Supply Project (MPWSP) CPUC Proposed Decision on Application 12-04-019; Discuss District Comments and August 22nd Oral Arguments

4. Pure Water Monterey – Cost of Water Discussion

Set Next Meeting Date

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. Please send a description of the requested materials and preferred alternative format or auxiliary aid or service by 5PM on Thursday, August 16, 2018. Requests should be sent to the Board Secretary, MPWMD, P.O. Box 85, Monterey, CA, 93942. You may also fax your request to the Administrative Services Division at 831-644-9560, or call 831-658-5600.

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WATER SUPPLY PLANNING COMMITTEE

ITEM: ACTION ITEM

1. CONSIDER ADOPTION OF FEBRUARY 21, 2018 COMMITTEE MEETING MINUTES

Meeting Date: August 21, 2018

From: David J. Stoldt,
General Manager

Prepared By: Arlene Tavani

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

SUMMARY: Attached as **Exhibit 1-A** are draft minutes of the February 21, 2018 committee meeting.

RECOMMENDATION: The Committee should adopt the minutes by motion.

EXHIBIT
1-A Draft Minutes of the February 21, 2018 Committee Meeting

EXHIBIT 1-A

DRAFT MINUTES
Water Supply Planning Committee of the
Monterey Peninsula Water Management District
February 21, 2018

Call to Order: The meeting was called to order at 3:30 pm.

Committee members present: Robert S. Brower, Sr. - Committee Chair
Jeanne Byrne
Ralph Rubio

Committee members absent: None

Staff members present: David J. Stoldt, General Manager
Larry Hampson, Water Resources & Engineering Manager/District Engineer
Arlene Tavani, Executive Assistant

District Counsel present Fran Farina

Comments from the Public: Luke Coletti noted that a correction should be made to minutes of the 1/23/2018 committee meeting, under item 3(d) – delete the reference to Public Utilities Commission and replace it with State Water Resources Control Board.

Action Items

1. Consider Adoption of Meeting Minutes of January 23, 2018

On a motion of Byrne and second by Brower, the minutes were approved unanimously with the correction noted by Luke Coletti during public comment. The vote was 3 – 0 with Bryne, Brower and Rubio voting in support.

Discussion Items

2. Update on Los Padres Dam Study

Hampson reported that two workshops were conducted with the Technical Review Committee that included staff from California Department of Fish and Wildlife (CDF&W), National Marine Fisheries Service (NMFS), California Coastal Conservancy (CCC), California American Water (CAW) and District staff.

Fish Passage Workshop - There was discussion about letters from the NMFS and CDF&W expressing concern that insufficient data on fish passage and mortality was available for concurrent preparation of fish passage and Los Padres Dam alternatives. Hampson stated that the District and NMFS jointly implemented a fish-tagging program to collect data that would respond to agency concerns. The committee

agreed that improving fish attraction for the existing trap and truck program should be evaluated as soon as possible. One alternative for fish passage is the Whoosh system. The NMFS is testing the system at another dam. However, the system requires rigorous testing and data before it could be considered for the Los Padres Dam.

Dam Alternatives Workshop - In a few months a study should be completed that will describe changes to sediment transport from different dam removal and dredging scenarios. District staff will work with the USGS to complete a computer simulation model for water availability and present it to the TRC for review. A study to determine liability should the dam be removed must also be completed.

Public Comment: Luke Coletti noted that concerns have been raised about high sulfite levels at the fish trap. He suggested that a water quality assessment should be completed as one component of assessing the effectiveness of the fish trap. *Hampson responded that Cal-Am controls access to the trap, so a coordinated effort between Cal-Am and the District would be needed.*

3. **Update on Water Supply Projects**

a. Pure Water Monterey (PWM)
No discussion.

b. California American Water Desalination Project
No discussion.

c. DeepWater Desal
No new information to report.

d. Local Water Projects
Stoldt provided an update on local water projects – **(1) The City of Monterey** - Monterey Regional Water Recovery Study is underway. **(2) Monterey Peninsula Airport District (MPAD)** - talks continue with MPAD on utilizing subpotable water from MPAD wells for expansion of the north side business park. This project would utilize subpotable and potable water sources. **(3) Del Monte Golf Course** – The Pebble Beach Company is considering development of storage for water from wells that were constructed with grant funds from the District. **(4) The Pacific Grove Stormwater Dry Weather Flow Reuse Project** – The City of Pacific Grove has certified that it has achieved permanent abandonment of its Cal-Am connection, although the potential for emergency service remains.

Public Comment: Luke Coletti advised that there are concerns about high-chloride levels in the reclaimed water, and that the Pacific Grove project should be operated for one year before it could be certified as being permanently disconnected from the Cal-Am system.

4. Discuss Rainfall and Storage Conditions

Stoldt distributed a handout titled Water Year Classification by Recorded Rainfall. He reviewed the handout and stated that storage in the Monterey Peninsula Water Resources System should be sufficient to meet the needs of the District for the next 17

months. Based on storage, there should be no need to implement additional water conservation measures.

5. Discuss Reinstatement of District Reserve and Policy for Use

The committee discussed establishment of a District reserve, and if it should be restricted to projects that provide a public benefit or if it could be allocated for jurisdictional use. During the discussion committee members opined that: (a) only for public benefit projects; (b) Board should determine if a project provides a public benefit; (c) each request should be determined on its merit by the Board – not according to a list of qualifying projects; and (d) project should not be growth inducing.

Public Comment: Luke Coletti stated that the SWRCB is not concerned about how the District views intensification of use, but in how much water is diverted from the Carmel River. He hoped the CDO would be resolved soon. He suggested that since Cal-Am and the District have a non-disclosure agreement re billing records, Cal-Am could provide the District with an analysis of water use in lieu of actual water records. He noted that recent projects are deed restricted, so that the District has access to water records at the site.

Set Next Meeting Date: No meeting date was set.

Adjournment: The meeting was adjourned at 4:30 pm.

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WATER SUPPLY PLANNING COMMITTEE

ITEM: DISCUSSION ITEM

2. WATER SUPPLY CHARGE AND USER FEE – CITIZEN OVERSIGHT PANEL DISCUSSION

Meeting Date:	**August 21, 2018**	**Budgeted:**	**N/A**
From:	**David J. Stoldt** **General Manager**	**Program/** **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: At its July 23, 2018 meeting the Ordinance 152 Citizens' Oversight Panel renewed discussion of the potential sunset of all or a portion of the District's Water Supply Charge now that the User Fee is back on the Cal-Am water bill.

As background, on January 25, 2016 the California Supreme Court filed its opinion in the suit the District brought against the California Public Utilities Commission (CPUC or PUC), determining *"PUC Decision No. 11-03-035 (rejecting Cal-Am's application for authorization to collect the District's user fee, and also rejecting the settlement agreement entered into by Cal-Am, the District, and the Division of Ratepayer Advocates) and PUC Decision No. 13-01-040 (denying the District's application for rehearing) are set aside. The matter is remanded to the PUC for further proceedings consistent with the views expressed herein."* A new Commissioner, Liane Randolph was assigned to the case on March 24, 2016. The Administrative Law Judge (ALJ) assigned by the CPUC remained Mary Beth Bushey. On March 30, 2016 the Commissioner and ALJ issued a ruling stating that the District's Water Supply Charge provides the relief sought by the 2010 application, hence rather than reinstating the User Fee. The District challenged the CPUC that it reached an improper conclusion and was not following the Court's direction. After protracted discussions, the Use Fee was finally reinstated in July 2017.

As discussed under "LEGAL AUTHORITY" below, On March 16, 2016 the law firm of Colantuono, Highsmith, Whatley PC issued the legal opinion (**Exhibit 2-C**, attached) answering four of the District's questions in the District's favor. Hence, the District will have flexibility in assessing and using the User Fee going forward.

However, District Ordinance No. 152 which established the Water Supply Charge states in its Section 10.C(b) that the District shall not collect a Water Supply Charge *"to the extent alternative funds are available via a charge collected on the California American Water Company bill."* Therefore, it is incumbent upon the board to examine its needs and availability of its two primary

funding sources and develop a plan for their use, including reductions or possible sunsets of either or both.

At its April 2016 meeting, the District Board approved a plan that encompassed the following:

- Collect both charges for at least 3 years. This would be done for 4 key reasons: (i) the User Fee would primarily fund programs already in Cal-Am surcharges (District conservation and river mitigation), so there is little or unknown "surplus" revenue; (ii) the Monterey Peninsula Taxpayers Association lawsuit over the Water Supply Charge remained unresolved at that time, hence that revenue remained at risk; (iii) there were still large near-term expenditures required on water supply projects; and (iv) Cal-Am had a recent history of significant revenue undercollection, so the viability of the User Fee is at risk until the CPUC rules on a more stable rate design, and the predictability of the User Fee revenue is better known. After that time, the Board would begin to sunset or reduce collections of either or both, if possible. Collection of the User Fee began in July 2017, hence full collection of both is slated to continue through June 2020.

- Have only a single MPWMD User Fee Surcharge on Cal-Am bill, instead of a mitigation surcharge, a conservation surcharge, and the User Fee.

- Remove the existing Conservation Surcharge and Mitigation Program expenses from the Cal-Am rates when User Fee collections begin. Capture in MPWMD User Fee budget. Cal-Am to remain responsible for its rebate budget until the User Fee has capacity.

- Remove the same programs from the next GRC period (2018-2020).

- Calculate solely on "Total Water Service Related Charges" line on bill, ensuring that there is no "surcharge on a surcharge", rather the User Fee is based solely on Cal-Am water and meter revenues.

- Cal-Am shall remit with regularity (monthly) and automatically.

There are challenges to a full and immediate sunset of the Water Supply Charge after the 3-year period as follows:

Covenants and Pledges: The Water Supply Charge has been pledged to the repayment of the Rabobank loan which will have a balance of $3.1 million due June 30, 2023. A sinking fund of approximately $596,000 per year could meet this future obligation (assumes 2.0% interest over 5 years.) Regular annual payments until that time are $219,136 (see **Exhibit 2-A** attached.) The District also adopted Resolution 2015-14 which obligates the District to utilize the Water Supply Charge to repay the State Revolving Fund loan for the Pure Water Monterey project in the event the wholesale water sale revenues are interrupted or insufficient (see **Exhibit 2-B**.) This is a contingent liability and there is not presently any payment obligation.

Sufficiency: As noted in the first and third bullet points above, two District programs that were contractually funded by Cal-Am and shown as surcharges on the bill – Conservation and Carmel

River Mitigation – but are rightfully activities of the District that should be funded through District revenue, were subsumed by the User Fee once reinstated. For FY 2017-18, Conservation expenses that were previously funded contractually were approximately $370,000 and Mitigation expenses were $2,700,000 or a total of $3.07 million. The FY 2018-19 adopted budget assumes $4.25 million in User Fee Revenue. Hence, there is a budgeted "surplus" of $1.18 million annually, which is approximately one-third of annual Water Supply Charge revenue.

Other Water Supply Needs: The District continues to build-out its Aquifer Storage and Recovery project, certain mitigation projects related to the pumping by Cal-Am, public financing a portion of the desalination debt, the new water allocation process, and Pure Water Monterey establishment of reserve water. Each of these has a related cost:

Aquifer Storage and Recovery build-out	$1.2 million
Mitigation Projects	$1.3 million
Desalination financing	$0.9 million
Water Allocation	$1.3 million
Pure Water Monterey reserve water	$3.1 million

Such expenditures are expected to be incurred within the next 4 to 5 years.

Future District Liabilities: Competing for the use of the User Fee are other unfunded liabilities of the District. Any Board action that would direct User Fee revenue to be reserved for such liabilities reduces the availability to sunset the Water Supply Charge. Presently, the District's unfunded CalPERS pension obligation is $4.9 million and its unfunded Other Post-Employment Benefits (OPEB) is $3.2 million.

BACKGROUND: The District is authorized, by law, to impose rates and charges for services, facilities, or water that it may furnish, as well costs of operations and activities related to the provision of water delivered by others. The District first implemented a User Fee in 1983 as a percentage of the California American Water (Cal-Am) bill to fund District activities and collected it continuously until temporarily suspended by the CPUC on May 24, 2011.

The District modified its User Fee by Ordinance sixteen times from 1983 through 2008. The proceeds of the User Fee have been used to support the District's environmental mitigation, conservation and rationing, water supply, and any other purposes throughout its history.

District Ordinance 61 adopted July 20, 1992 established a User Fee at 7.125 percent of the Cal-Am bill, an amount that was reinforced by Ordinance 67 in1992, Ordinance 78 in 1995, and Ordinance 82 in 1996 and all four ordinances preceded Proposition 218, the self-titled "Right to Vote on Taxes Act" approved by voters November 5, 1996 and which added Articles XIIIC and XIIID to the California Constitution, and made numerous changes to local government finance law, a defines a fee or charge subject to Proposition 218. District Ordinance 138 adopted December 8, 2008 reaffirmed the addition of a 1.20 percent to the User Fee after a Proposition 218 protest hearing, said amount to support the funding of the District's Aquifer Storage and Recovery (ASR) program, bringing the total amount of the User Fee to 8.325 percent of the Cal-Am bill.

The CPUC in Decision D.09-07-021 in July 2009 prohibited further regular collection and disbursement by Cal-Am to the District of its User Fee and directed such amounts to be recorded in a memorandum account until Cal-Am reapplies to the CPUC proposing a program to reinstate the User Fee. Such application was made January 5, 2010. A motion to approve an all-party settlement was made to the CPUC in May 2010 which would have allowed continued past practice of collection of the District User Fee on Cal-Am bills. CPUC decision D.11-03-035, issued March 24, 2011 rejected the joint settlement agreement. The CPUC halted collection of the User Fee and ordered the memorandum account closed May 24, 2011. On January 24, 2013 the CPUC issued decision D.13-01-040 modifying D.11-03-035 and denying any further rehearing of the matter.

The District on February 22, 2013 filed a Petition for Review of CPUC Decisions D.11-03-035 and D.13-01-040 with the California Supreme Court.

On January 25, 2016 the California Supreme Court filed its opinion in the matter, as described under "DISCUSSION" above.

LEGAL AUTHORITY: On February 18, 2016 the general manager asked for outside counsel legal opinions on four matters:

1) The User Fee at an amount of 7.125% was in place prior to Proposition 218. Can we reinstate it on the Cal-Am bill without a Prop 218 protest hearing process? The theory being that the District never terminated the fee, rather was inappropriately barred from collecting it. Further, 7.125% was continuously collected from the Seaside municipal water distribution system and the Pebble Beach Reclamation project even during the time the CPUC barred its collection on the Cal-Am bills.

2) The 1.2% component was designated for Aquifer Storage and Recovery (ASR) by District Ordinances 123 and 138 and was established pursuant to Prop 218 with a protest hearing. Can we reinstate it without a Prop 218 protest hearing process for use on ASR?

3) The establishment of the District's User Fee dates back to 1983, but it has been changed by ordinance several times. The Ordinances have tended to describe the uses of the money, sometimes generally such as Section 5 of Ordinance 78, or sometimes more specifically, such as Section 6 of Ordinance 61. Then Section 3 of Ordinance 67 appears to give the Board broad authority to use the User Fee proceeds in any manner and was the last active ordinance which established the 7.125% level. Hence, if Question 1 is answered in the affirmative, does the District have the authority to allocate the revenues to any purpose of the District?

4) Can the District "establish" the User Fee at the total of 8.325% of the water bill, but then waive collection of all or a portion of it if not all the money is needed at that time? (e.g. use the grandfathered 7.125% amount but collect, for example, only 4.0% worth of it one year, 6.5% the next, and so on)

On March 16, 2016 the law firm of Colantuono, Highsmith, Whatley PC issued the legal opinion (**Exhibit 2-C**, attached) answering all four of the questions in the District's favor.

EXHIBITS

2-A Selected pages of Rabobank Loan Installment Purchase Agreement

2-B MPWMD Resolution 2015-14

2-C Opinion of law firm of Colantuono, Highsmith, Whatley PC

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EXHIBIT 2-A

INSTALLMENT PURCHASE AGREEMENT

between the

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

and

MUNICIPAL FINANCE CORPORATION

Dated as of April 1, 2013

"Net Proceeds" means, when used with respect to any insurance or condemnation award, the proceeds from such insurance or condemnation award remaining after payment of all reasonable expenses (including attorneys' fees) incurred in the collection of such proceeds.

"Net Revenues" means, for any period, all of the Revenues during such period less all of the Maintenance and Operation Costs during such period.

"Outstanding" when used as of any particular time with reference to this Installment Purchase Agreement, means all Installment Payments except Installment Payments paid or deemed to have been paid within the meaning of Article VI.

"Person" means any individual, partnership, firm, corporation, association, joint venture, trust or other entity, or any government (or political subdivision or agency, department or instrumentality thereof).

"Permitted Investments" means any investment that is a legal investment for the District under the laws of the State for the moneys proposed to be invested therein.

"Project" has the meaning ascribed thereto in the recitals hereto.

"Project Costs" means costs of the acquisition, construction and installation and equipping of the Project or Alternate Project, which are paid from moneys on deposit in the Project Fund.

"Project Fund" means the fund established in Section 2.02 hereof.

"Property" means the existing facilities and property owned by the District described in Exhibit B attached hereto, together with all extensions thereof and improvements thereto hereafter acquired, constructed or installed by the District.

"Reserve Fund" means account number 346991231 established pursuant to Section 3.07 to be held by the Bank.

"Reserve Requirement" means the amount of $219,136.

"Revenue Fund" means the fund held and maintained by the District into which the District deposits Revenues.

"Revenues" means the water supply charge levied pursuant to Ordinance 152.

"Sale and Transfer Agreement" means that Sale and Transfer Agreement, dated as of April 1, 2013, by and between the District and the Corporation relating to this Installment Purchase Agreement.

"Specified Obligations" means (i) all bonds, notes, installment sale agreements, leases, or other obligations of the District, payable from and secured by a pledge of and lien upon any of the Revenues incurred on a parity with the payment of the Installment Payments pursuant to Section 4.01 and (ii) any agreement designated by the Bank and the District as a Specified Obligation, including an agreement to fund operating expenses of the District.

"State" means the State of California.

the Property is condemned, damaged, destroyed or seized or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset, counterclaim, defense, recoupment, abatement, suspension, deferment or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement or covenant contained herein for any cause whatsoever.

Section 3.02. Interest Component of the Installment Payments.

The Installment Payments shall bear interest from the Closing Date until the payment of the principal thereof and the prepayment premiums, if any, thereon, shall have been made or provided for in accordance with the provisions of Article VI hereof, whether at maturity, upon prepayment or otherwise. Interest accrued on the Installment Payments from the Closing Date and from each Interest Payment Date to, but not including, the next succeeding Interest Payment Date shall be paid on each such succeeding Interest Payment Date. Interest with respect to the Installment Payments shall be computed on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) elapsed. The Bank's determination of a rate of interest hereunder will be conclusive, absent manifest error.

Section 3.03. Pledge and Application of Revenues.

All of the Revenues, the Project Fund, the Reserve Fund, the Debt Service Fund and accounts therein, are hereby irrevocably pledged to the punctual payment of the Installment Payments and Specified Obligations, to the extent applicable. Such pledge constitutes a first and exclusive lien on and security interest in the Revenues for the payment of the Installment Payments and payments of all Specified Obligations in accordance with the terms hereof and thereof. The Installment Payments are payable from Net Revenues.

The District shall take all actions as required under the Act to levy and collect an amount of Revenues during each Fiscal year that are at least sufficient, after making allowances of contingencies and error in the estimates, to pay the Installment Payments when due. If there is a deficiency in the Reserve Fund, the amount of Revenues levied hereunder shall also be sufficient to restore the balance in the Reserve Fund to the full amount of the Reserve Requirement.

The District covenants and agrees that all Revenues, when and as received, will be deposited into the Revenue Fund hereby created and established and held by the District. All Revenues shall be disbursed, allocated and applied solely to the uses and purposes hereinafter in this Article III set forth, and shall be accounted for separately and apart from all other money, funds, accounts or other resources of the District.

Section 3.04. Covenant to Budget and Appropriate.

The District covenants to take such action as may be necessary to include all Installment Payments due hereunder in each of its final approved budgets, and to make all necessary appropriations for payment of the Installment Payments. The covenants on the part of the District contained herein are duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Installment Purchase Agreement agreed to be carried out and performed by the District.

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

RESOLUTION NO. 2015-14

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT IN SUPPORT OF A FINANCIAL ASSISTANCE APPLICATION FOR A FINANCING AGREEMENT FROM THE STATE WATER RESOURCES CONTROL BOARD FOR THE PLANNING, DESIGN AND CONSTRUCTION OF THE PURE WATER MONTEREY GROUNDWATER REPLENISHMENT PROJECT

WHEREAS, the Board of Directors of the Monterey Peninsula Water Management District ("District") on April 20, 2012 approved a three-party Memorandum of Understanding with the Monterey Regional Water Pollution Control Agency ("Agency") and California American Water to develop the Pure Water Monterey Groundwater Replenishment Project ("Project"); and

WHEREAS, the Board of Directors of the District on July 31, 2013 approved a sixteen-party proposed Settlement Agreement to develop the Monterey Peninsula Water Supply Project, including the Pure Water Monterey Groundwater Replenishment Project, as part of Application A.12-04-019 at the California Public Utilities Commission; and

WHEREAS, the Board of Directors of the District on October 8, 2014 approved a five-party Memorandum of Understanding Regarding Source Waters and Water Recycling in support of the Pure Water Monterey Groundwater Replenishment Project; and

WHEREAS, the Project would produce replacement water sources and groundwater storage to allow California-American Water Company to extract 3,500 AFY from the Seaside Groundwater Basin to meet its obligations to find a replacement to its use of water from the Carmel River; and

WHEREAS, the District will enter into a Water Purchase Agreement for the sale of the product water and creation of revenues that will pay the costs of the Project; and

WHEREAS, the Board of Directors of the District on April 20, 2015 authorized utilization of the District credit for financing of the Pure Water Monterey Groundwater Replenishment Project; and

WHEREAS, the Board of Directors of the Agency has approved its Resolution No. 2014-03 authorizing its General Manager to sign and file, for and on behalf of the Agency, in the State Revolving Fund application process; and

WHEREAS, the State Water Board offers a State Revolving Fund Loan Program that would support the construction of the Project; and

WHEREAS, the loan application requires an official resolution to be adopted by the Board of Directors of the Agency and the District verifying support of the loan.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Monterey Peninsula Water Management District to:

1. Verifies that it authorizes the General Manager (the "Authorized Representative") or his/her designee to sign and file for on behalf of the District, a financial assistance application or letter in support of an Agency application from the State Water Resources Control Board for the planning, design, and construction of the Pure Water Monterey Groundwater Replenishment Project;
2. Authorizes the General Manager or his/her designee to provide the assurances certifications, and commitments required for the financial assistance application, including executing a financial assistance agreement from the State Water Resources Control Board and any amendments or changes thereto;
3. Hereby dedicates and pledges wholesale water sales revenues from the water purchase agreement, and its ability to raise a District Water Supply Charge through the Proposition 218 process as additional support should revenues from the water purchase agreement be insufficient or interrupted, to payment of any and all Clean Water State Revolving Fund and/or Water Recycling Funding Program financing for the Pure Water Monterey Groundwater Replenishment Project;
4. Commits to collecting such revenues and maintaining such funds throughout the term of such financing and until the repayment obligation thereunder is satisfied unless modification or change is approved in writing by the State Water Resources Control Board. So long as the financing agreements are outstanding, the District's pledge hereunder shall constitute a lien in favor of the State Water Resources Control Board

on the foregoing funds and revenues without any further action necessary. So long as the financing agreements are outstanding, the District commits to maintaining funds and revenues at levels sufficient to meet its obligations under the financing agreements; and

5. Authorizes the General Manager or his/her designee to represent the District in carrying out the District's responsibilities under the financing agreement and compliance with applicable state and federal laws.

On motion of Director Pendergrass, and second by Director Potter, the foregoing resolution is duly adopted this 20th day of July 2015, by the following votes:

AYES: Directors Pendergrass, Potter, Brower, Byrne, Clarke, Lewis and Markey

NAYES: None

ABSENT: None

I, David J. Stoldt, Secretary of the Board of Directors of the MPWMD, hereby certify that the foregoing is a full, true and correct copy of a resolution duly adopted on the 20th day of July 2015.

Witness my hand and seal of the Board of Directors, this 27th day of July, 2015.

David J. Stoldt, Secretary to the Board

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EXHIBIT 2-C

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COLANTUONO
HIGHSMITH
WHATLEY, PC

Michael G. Colantuono
(530) 432-7359
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MEMORANDUM

TO:	Dave Stoldt, General Manager, Monterey Peninsula Water Management District	FILE NO:	43025.0005
FROM:	Michael G. Colantuono, Esq. Ryan Thomas Dunn, Esq.	DATE:	March 16, 2016
CC:	David C. Laredo, Esq. Heidi Quinn, Esq. David J. Ruderman, Esq.		
RE:	Legal Opinion — MPWMD User Fee		

SUMMARY

As you asked, we write to opine on four issues you identified in your February 18th email regarding the District's authority to assess an 8.325 percent user fee on retail water bills ("User Fee").

Issue 1: Because the 7.125 percent portion of the User Fee predates 1996's Proposition 218, and because the District has not increased it and instead has always expected Cal-Am to pay it, requiring Cal-Am to resume its collection would not require a Proposition 218 protest hearing because doing so is not "imposing" or "increasing" the fee. However, Cal-Am's ability to comply with the District's ordinance compelling it to raise the fee is impaired by the remaining litigation following the Supreme Court's remand in *Monterey Peninsula Water Management Dist. v. Public Utilities Com*. (2016) 62 Cal.4th 693.

Issue 2: When the District stopped receiving the User Fee from Cal-Am, it also stopped receiving the 1.2 percent component, but it did not repeal that portion. As such, reinstituting it would not be increasing or imposing it. As is true of Issue 1 above, we conclude no new protest hearing is required.

Issue 3: The District has the authority to use the revenues from the 7.125 percent portion of the User Fee for any District purpose. The District is limited to using revenues from the 1.2 percent component for water supply projects, but it may also use these revenues for any project benefiting water users if its Board passes a resolution to do so.

Issue 4: The District can waive collection of a portion of the User Fee, in whole or part, without waiving its right to collect the entire User Fee at a later date, and it need not submit the User Fee to the voters before again beginning collection. We recommend it do so by a resolution suspending all or part of the fee that states a sunset date on the resolution. Thus, when the rate returns to its higher, previous level, no legislation action makes it so – the expiration of a temporary reduction does. Such temporary reductions can be renewed from year to year until the District requires additional revenue.

FACTS

Our opinions rest on the facts stated here. If these facts are incorrect or materially incomplete, please let us know as different facts may require us to alter our advice to you. We understand the list of ordinances in the "MPWMD User Fee History" chart provided for our review include every District Ordinance pertinent to the user fee. These are Ordinances 10, 12, 29, 32, 36, 37, 41, 51, 55, 58, 61, 67, 78, 82, 123, and 138.

We have also considered District Resolution No. 2011-09, dated May 27, 2011, which directed Cal-Am to continue to collect and remit the User Fee at a rate of 8.325 percent of charges to its customers, and we assume the facts stated in that Resolution are correct. We also understand Cal-Am last paid any portion of the user fee in June 2011, but that the District did not formally suspend Cal-Am's duty to collect the user fee or otherwise alter that duty since the District adopted Resolution 2011-09.

ANALYSIS

Issue 1. Voter approval is required to "impose or increase" property related fees, including fees for ongoing water service through an existing connection such as the user fees at issue here. (Cal. Const., art. XIII D, § 6, subd. (a); *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205.) Neither Proposition 218 nor the Proposition 218 Omnibus Implementation Act of 1997 ("Omnibus Act") defines "impose," but the Court of Appeal has interpreted it to mean the initial enactment of a fee or charge. (*Citizens Ass'n of Sunset Beach v. Orange County LAFCO* (2012) 209 Cal.App.4th 1182, 1194 ["The word 'impose' usually refers to the first enactment of a tax[.]"].) Given that the District first enacted the

7.125 percent component in 1983 and gave it its current form in 1992, it has taken no action to "impose" the fee since the 1996 adoption of Proposition 218 and the fee does not yet trigger a duty to comply with that measure.

The Omnibus Act defines "increase" for purposes of Proposition 218 as a change in a fee that "[r]evises the methodology by which the tax, assessment, fee or charge is calculated, if that revision results in an increased amount being levied on any person or parcel." (Gov. Code, § 53750, subd. (h)(1)(B).) A levy is not increased for purposes of Proposition 218 if it "[i]mplements or collects a previously approved tax, or fee or charge so long as the rate is not increased beyond the level previously approved by the agency, and the methodology previously approved the agency is not revised so as to result in an increase[.]" (*Id*. at subd. (h)(2)(B).)

On the facts recited above, we conclude the District has not "increased" the fee since the July 1, 1997 effective date stated by Proposition 218's article XIII D, section 6, subdivision (d). In a Los Angeles case, the City imposed a utility users tax on both the call detail portion of cell phone bills and on minimum monthly charges. Carriers objected, claiming to lack technology to identify calls that originated or destinated in Los Angeles necessary to trigger its taxing authority under the Commerce Clause of the federal constitution as interpreted in *Goldberg v. Sweet* (1989) 488 U.S. 252. The City agreed by letter that carriers might tax only base monthly charges until technology to track the origin and destination of calls became available. Then Congress adopted the Mobile Telecommunications Sourcing Act of 2000 ("MTSA") to provide that a cellular call was presumed to originate or destinate in the city to which the carrier addressed bills for cellular service. The city then wrote carriers, directing them to commence collection of the tax on the entirety of cell phone bills. The carriers, refused and sued for declaratory relief that the City's new direction constituted a tax "increase" requiring voter approval under Proposition 218. The Court of Appeal agreed with the carriers, concluding the letters to carriers evidenced an "administrative methodology" to calculate the tax within the meaning of Government Code section 53750, subdivision (h)'s definition of "increase" and the City had changed that methodology by its post-MTSA letter. (*AB Cellular LA, LLC v. City of Los Angeles* (2007) 150 Cal.App.4th 747, 756–757, 761–763.) Thus, even though Los Angeles never amended its utility users tax ordinance, it had established an administrative methodology that could not be changed without voter approval.

Here, we understand that there have been no changes relevant to the District's collection of, or methodology in calculating, the 7.125 percent component of the User Fee

since Ordinance 67 in 1992. Cal-Am ceased complying with the District's ordinance under the force of an order of the California Public Utilities Commission, and the District promptly litigated the issue. The facts set out above identify no action of the District which can be characterized as acquiescing in the PUC's position or establishing a methodology to reduce or suspend the fee.

Moreover, *AB Cellular* recognized the District could choose to end or reduce collection for any reason without losing the right to begin collection of the full amount at a later date: "[A] local taxing entity can enforce less of a local tax than is due under a voter-approved methodology, or a grandfathered methodology, and later enforce the full amount of the local tax due under that methodology without transgressing Proposition 218." (*AB Cellular*, *supra*, 150 Cal.App.4th at p. 763.)

Accordingly, we conclude that Cal-Am's renewed collection of the User Fee does not "impose" or "increase" the User Fee so as to trigger Proposition 218 bur rather fits squarely within Government Code, section 53750, subdivision (h)(2)(B)'s exception to the definition of "increase" for collection of a "previously approved tax, fee, or charge" without change in its rate or the administrative methodology for calculating it. As such, no protest hearing is required.

Issue 2. The District adopted Ordinance 138 in 2008 to reaffirm the 1.2 percent component of the User Fee in compliance with Proposition 218. That ordinance explains that affected property owners were given opportunity to protest the 1.2 percent component pursuant to Proposition 218 and the Board found that majority protest occurred. (Ord. 138, p. 4 at ¶ 23.) Because we understand the District has not established an administrative methodology to reduce or eliminate the fee, it can collect it without new Proposition 218 compliance for the reasons stated under Issue 1 above.

Issue 3: 7.125 percent component. The proceeds of a property related fee may only be used for the purposes for which the fee was imposed. (Cal. Const., art. XIII D, § 6, subd. (b)(2).) However, the District has authority to interpret the ordinances which establish its revenues and courts will give some deference to a reasonable construction. (E.g. *Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1082 [review of city's expenditures of special parcel tax "limited to an inquiry into whether the action was arbitrary, capricious or entirely lacking in evidentiary support"].) A court would then apply standards of statutory interpretation to the ordinances, first looking at the language at issue, then the intent of the language. (*Ibid*.)

In addition, The District must construe the purpose of the fee in light of its statutory power and to defend the fee as a fee for services rendered by the District and not purely discretionary revenue, as taxes are. (Cf. Cal. Const., art. XIII C, § 1, subd. (e)(2) [exemption to Prop. 26's definition of "tax" for service fees]; *id*. at art. XIII A, § 4 [Prop. 13's two-thirds voter approval requirement for special taxes]; Gov. Code, § 50076 [defining "special tax" under Prop. 13 to exclude "any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes"].)

Ordinance 55, enacted in May 1991, restructured the user fee. This ordinance authorized "immediate collection of a user fee in the aggregate amount of 6.824 percent of Cal-Am bills, replacing prior fees which amounted to 8.125 percent of that bill." (Ord. 55, § 2.) Thus, Ordinance 55 "replac[ed]" earlier user fee ordinances, making them irrelevant to analysis of allowable uses of the fee. Ordinance 55's recitals mention a need to "implement the mitigation measures under the five year plan to ease environmental impacts caused by water production" (*id*. at p. 3, ¶ 11) but do not otherwise limit the District's use of the fee. Similarly, Ordinance 55 refers to fees "to fund mandatory water rationing." That ordinance relabeled and decreased the "water rationing user fee" to "a water conservation user fee of 2.11 percent" of Cal-Am bills. (*Id*. at p. 2, ¶ 10.) Ordinance 55 does not otherwise explain the intended purposes of this "water conservation user fee" or identify specific limitations on its use.

In September 1991, the District enacted Ordinance 58, authorizing "a user fee in the aggregate amount of 8.125 percent" and "replacing prior fees authorized by Ordinance 55 which amounted to 6.824 percent" of customer bills. (Ord. 58, § 2.) Ordinance 58 states the fee's purpose "to fund mandated District water supply activities, including the five year mitigation program and the water conservation/rationing program caused by the water supply emergency" (*id*. at § 1) but does not more precisely limit use of the revenues. Thus, the District has the discretion to use these funds as deems fit to accomplish the fee's purpose to fund water supply activities, including conservation, rationing and other similar efforts.

In July 1992, the District enacted Ordinance 61, to "amend the user fee established by Ordinance No. 58" to delete a surcharge to fund rationing. (Ord. 61, p. 1, ¶ 6.) Ordinance 61 refers to the "2.11 percent user fee established by Ordinance No. 55 to fund water conservation activities" and reduces it from 2.11 to 1.11 percent. (*Id*. at § 6.) The District adopted this 7.125 percent aggregate fee, "replacing prior fees," meaning the

District could construe it as a completely new ordinance. (*Ibid*.) Again, there are no express limitations on the use of the revenues derived from the 7.125 percent fee in Ordinance 61, and thus the District has the power to use the revenues for the purpose for which the fee was imposed, again, water conservation.

Ordinance 67, enacted in December 1992, states an intent to "reallocate the existing user fee established by Ordinance No. 55 and modified by Ordinance No. 61, so as to increase user fee revenue available for the Five Year Mitigation Program." (Ord. 67, p. 1, ¶ 1.) A recital assumes the 1.11 percent fee discussed in Ordinance 61 was "exclusively dedicated to conservation activities." (*Id*. at p. 1, ¶ 2.) The same recital states the District could use the 1.11 percent fee "for District programs relating to conservation, rationing, irrigation, erosion control, mitigation, and/or water augmentation expenses, provided that all such expenses shall be required to confer benefit and or service to existing water users." (*Id*. at p. 1, ¶ 2.)

Ordinance 67's third section refers to the "aggregate user fee," understood to be "the present 7.125 percent user fee." (Ord. 67, § 2.) It reads in full:

> Section Three: User Fee Reallocation
>
> A. This ordinance shall modify the accounting and allocation of the aggregate user fee presently collected to fund water conservation programs of the District, and instead **allow the use, allocation and accounting of that same fee to District programs relating to conservation, rationing, irrigation, erosion control, mitigation, water planning, and/or water augmentation program expenses, provided that all such expenses must be [sic] confer benefit and/or service to existing water users**. This ordinance shall cause neither a reduction nor an increase in fees, but shall instead modify the means by which use of those fees are monitored and allocated.
>
> B. The amount of revenue reallocated shall be equal to 1.11 percent collected on the Cal-Am water bill as established by the District in Ordinance No. 55 and modified by Ordinance No. 61 in July 1992.
>
> C. This ordinance shall republish the authorization to collect user fees in the same manner and amounts as previously authorized by ordinance. This fee shall not be exclusively dedicated to a single activity or program, but instead **may be allocated at the discretion of the Board provided that all**

> **such expenses shall confer benefit and/or service to existing water users**. **These services may include, but shall not be limited to conservation, rationing, irrigation, erosion control, mitigation, water supply planning, and water augmentation program expenses**. **Unincumbered [sic] fee revenue in any single year may be placed in the capital project sinking fund and may later be used to fund expenses associated with planning for, acquiring and/or reserving augmented water supply capacity (including engineering, hydrologic, legal, geologic, fishery, appraisal, financial, and property acquisition endeavors)**.
>
> D. A similar reallocation shall be made to user fees collected from other district water distribution systems of fifty (50) connections or more.

Thus, Ordinance 67 assumes that the 1.11 percent portion of the user fee discussed in Ordinances 55 and 61 is limited to funding "water conservation programs." (Ord. 67, § 3, ¶ A.) It "reallocates" that 1.11 percent to be used as is the rest of the 7.125 percent fee. (*Id*. at § 3, ¶ C.) Ordinance 67 defines the purposes for which the fee may be used quite broadly and "allow[s]" the Board "discretion" to allocate the fee as it sees fit, as long as there is a "benefit and/or service to existing water users." (*Ibid*.) Finding 4 states Ordinance 67 was required "to permit continuation of mandated and essential District programs." (Id. at p. 1, ¶ 4.)

It bears noting that Ordinance 78, enacted in 1995 to finance the New Los Padres Dam, states the user fee was "established to fund costs of water conservation, and programs to ameliorate environmental impacts caused by water production." (Ord. 78, § 5). Ordinance 78 was repealed by 1996's Ordinance 82 when the voters rejected the dam proposal (Ord. 82, § 1), and Ordinance 82's findings state that the user fees in place on the date of Ordinance 78's approval "shall remain in force and be unaffected" because the measure failed. (*Id*. at p. 1, ¶ 5).

In sum, the District may use revenues from the 7.125 percent component of the fee to provide a benefit or service to water users due to the very broad language of Ordinance 78.

Issue 3: 1.2 percent component. The 1.2 percent component enacted by Ordinance 123 and affirmed in Ordinance 128 specifies what the proceeds of this component may fund. Ordinance 123's second section states the proceeds of the fee "shall fund District water supply activities, including Phase 1 of its Aquifer Storage & Recover (ASR) effort."

Thus, the District must use these funds for water supply programs and services. (E.g., *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 443 ["'shall' is ordinarily construed as mandatory"].)

Ordinance 123's Section Two also states the fee "may also be allocated, by resolution at the discretion of the District Board of Directors, provided that all such expenses shall confer benefit and/or service to existing Cal-Am … water users." (Ord. 123, § 2.) It provides an exemplary list of such services — "conservation, rationing, irrigation, erosion control, mitigation, water supply planning, and water augmentation program expenses" (*ibid*.) — but states services which may be funded "shall not be limited to" those specified. It also states unexpended fee revenue "may" be placed in a reserve for later use for water supply capacity projects. (*Ibid*.) Thus, the District has discretion to use the 1.2 percent revenues for any "water supply activity" activity but may also, by resolution, fund any lawful District program or service that benefits the water users who pay the fee.

Ordinance 138, enacted in 2008 (after the effective date of Proposition 218), states the District "shall use" the 1.2 percent fee "to fund ASR costs" (Ord. 138, p. 3, ¶ 15) and the fee "may not be used for any other purpose or to fund general governmental activities." (*Id*. at p. 3, ¶ 18.) It further states fee proceeds "shall fund District water supply activities, including capital acquisition and operational costs for present and future ASR purposes" including Phase 1 of the ASR and subsequent ASR activities. (*Id*. at § 2.) Ordinance 138 uses the same language as Ordinance 123 allowing the Board to approve, by resolution, the use of the fee for other purposes that benefit water users. (*Ibid*.)

Ordinance 138 does not state a sunset date, but does state that the District cannot collect the 1.2 percent fee if revenues "exceed funds required to maintain plant, equipment, facilities, supplies, personnel and reasonable reserves necessary to provide water service." (Ord. 138, § 5.) This section also requires the Board to hold an annual hearing to review fee expenditures and requires the fee to sunset "unless the Board determines that the purpose of the fee is still required, and the amount of the fee is still appropriate." (*Ibid*.) The Board must also reduce the fee if "the amounts needed to fund that purpose are decreased." (*Ibid*.)

Thus, the District may use proceeds of the 1.2 percent component for "water supply activities" as it reasonably defines that term, including but not limited to ASR

purposes. The District also has the power, by resolution, to use the proceeds of the 1.2 percent component for any other project benefiting water users.

Issue 4. *AB Cellular*, discussed above, expressly considered the authority of an agency to collect less than the approved amount of a tax, fee, or charge: "[A] local taxing entity can enforce less of a local tax than is due under a voter-approved methodology, or a grandfathered methodology, and later enforce the full amount of the local tax due under that methodology without transgressing Proposition 218." (*AB Cellular*, *supra*, 150 Cal.App.4th at p. 763.) Thus, because the District has established a total user fee in the amount of 8.325 percent consistently with Proposition 218, it may collect that entire amount, part of that amount, or none of that amount if the funds are not needed.

Notwithstanding the unqualified language of *AB Cellular*, we recommend the District reduce the fee by a resolution which includes a sunset date. In this way, the District can increase the fee without an action of its Board that can be characterized as an "increase" within the meaning of Government Code, section 53750, subdivision (h). The sunset date can be extended as necessary until the District determines more funds are needed, in which case the suspension or reduction resolution can be allowed to lapse, triggering Cal-Am's duty to collect the fee at the higher rate.

Conclusion

The District need not comply with Proposition 218 to resume collection of the user fee once the PUC litigation allows Cal-Am to do so. The ordinance history of the fee allows the District fairly wide discretion it the use of fee proceeds provided those uses provide benefit to the water users who pay the fee.

Thank you for the opportunity to assist. If we can provide further advice or assistance, contact Michael at (530) 432-7359 or MColantuono@chwlaw.us or Ryan at (213) 542-5717 or RDunn@chwlaw.us.

WATER SUPPLY PLANNING COMMITTEE

ITEM: DISCUSSION ITEM

3. MONTEREY PENINSULA WATER SUPPLY PROJECT (MPWSP) CPUC PROPOSED DECISION ON APPLICATION 12-04-019; DISCUSS DISTRICT COMMENTS AND AUGUST 22ND ORAL ARGUMENTS

Meeting Date:	**August 21, 2018**	**Budgeted:**	**N/A**
From:	**David J. Stoldt** **General Manager**	**Program/** **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: At its meeting on August 20, 2018 the Board discussed the proposed decision of the California Public Utilities Commission (CPUC) regarding the Monterey Peninsula Water Supply Project (MPWSP) application A.12-04-019 of California American Water Company (Cal-Am). The CPUC is expected to act on the proposed decision at its September 13th or September 27th meetings. Their action would include certification of the Final Environmental Impact Report, issuance of a Certificate of Public Convenience and Necessity (CPCN – in effect, permission to build the 6.4 MGD desalination plant), and issuance of a final decision. Comments on the proposed decision are due by September 4th and oral arguments are scheduled for August 22nd.

This agenda item is included in case the Board chose to direct the Committee to provide additional guidance for the District comments and/or oral argument.

A summary of the proposed decision is reprinted from the Board packet and included here as **Exhibit 3-A**.

EXHIBIT
3-A Summary of Proposed Decision from August 20, 2018 Board Meeting

EXHIBIT 3-A

Summary of Proposed Decision
Reprinted from August 20, 2018 Board Meeting

SUMMARY: Key aspects of the proposed Order include the following:

- The Final Environmental Impact Report is certified

- A Certificate of Public Convenience and Necessity is granted for a 6.4 MGD desalination plant.

- If the return water obligation under the Monterey County Water Resources Agency Act is greater than an average of six percent (6%) for years 0-7; four percent (4%) in years 8-15; or 1.5% annually from year 16 forward, ratepayers will not bear any costs for meeting the return obligation above these amounts.

- The cost cap for the MPWSP and the remaining Cal-Am Only Facilities is $279.1 million excluding the amounts authorized in D.16-09-021 (the Monterey Pipeline.) To expend funds that Cal-Am intends to recover from ratepayers beyond the capital cost cap, Cal-Am must file a petition to modify the decision.

- Rate recovery for any Operations and Maintenance expenditures will not be authorized absent prior Commission authorization as part of the first general rate case after the Monterey Peninsula Water Supply Project is in operation.

- The Construction Funding Surcharge set forth in the decision is authorized and will be included in a Tier 3 advice letter adjusting the financing framework set out in the Comprehensive Settlement Agreement.

- Cal-Am shall file an application with the Commission requesting issuance of a financing order to allow for the securitization financing (District public financing) option consistent with this decision.

- Cal-Am shall submit a Tier 2 advice letter to reflect the service area extensions set out in Section 5 of the Return Water Settlement to provide water to Castroville Community Services District and Castroville Seawater Intrusion Project.

The Order will also close the Application, effective the date of the final decision.

The proposed decision also made certain findings and conclusions of law, as noted below:

Sizing and Demand: The CPUC stated its goal was to ensure a public water system can meet the maximum daily demand and for a system of Cal-Am's size to meet peak hour demand for 4 hours in a day with source capacity, storage capacity, and/or emergency connections. Further, the CPUC

concluded that projecting any future demand amount less than approximately 14,000 afy presents unreasonable risk without commensurate public benefit.

The CPUC stated that it felt assertions by some parties that the downward trend in water use in the District will continue and that only minimal growth will occur in demand after 2021 are not convincing. Cal-Am has met its burden of proof in that its forecast of demand when weighed with those opposed to it has more convincing force and the greater probability of truth. Cal-Am has shown that its forecast of demand considers the maximum day demand and peak hour demand for the past ten years. Cal-Am has met its burden of proof that its projections of future demand are reasonable in the circumstances of this case.

The Commission is not persuaded that it can rely upon the offers made by Marina Coast Water District or the proposed PWM expansion as available sources of water to Cal-Am, stating: "The Commission cannot rely upon the concept of potential expansion of the PWM project absent more concrete and specific information to find that additional supply is available to Cal-Am. Even if completed, PWM expansion alone fails to provide sufficient supply to meet the average demands assumed in MPWSP planning, and will not provide sufficient supply flexibility to meet most peak demands."

Source Water: In order for Cal-Am to possess appropriative rights to fresh water under a "developed water" legal basis whereby the MPWSP essentially creates a new water source, Cal-Am would need to be able to demonstrate that any withdrawal of basin water that is not ocean water would not injure or harm other existing basin water rights holders. There is no permit regime for such an appropriative water right, hence Cal-Am cannot obtain a water rights permit before MPWSP implementation. The MPWSP will primarily draw seawater, but could draw some brackish water that includes fresh water, but is not expected to intersect with or draw fresh water on its own. Such brackish water is not used and useful in its existing state, therefore the withdrawal of the fresh water component of the source water is not expected to cause harm or injury to existing legal water users. Cal-Am proposed that basin groundwater could be extracted without harm to existing lawful water uses by returning desalinated product water into the basin in the amount of the fresh water molecules that originated in the basin that are included in the withdrawn brackish water. The CPUC stated "Cal-Am's extraction from the Basin will not harm the quality of the Basin water, and over the years by returning supply water to the Basin the MPWSP will ultimately benefit the Basin groundwater users" and "The record supports the likelihood that Cal-Am will possess legal water rights for the MPWSP and that the MPWSP is not made infeasible by concerns over water rights."

Coordination with State Water Board: The timing associated with water supply constraints is governed by the orders issued by the State Water Resources Control Board, including but not limited to WR 95-10 (July 6, 1995), WR 2009-0060 (October 20, 2009) and WR 2016-0016 (July 19, 2016), and deadlines required of Cal-Am for certification of milestone compliance reporting stemming from those orders. Because of the timing of the State Water Resources Control Board Cease and Desist Orders, this decision should be effective on the date of the final decision.

Balance of Ratepayer Risk: There may be some risk with the use of slant well technology for the MPWSP, as such project risk should be appropriately apportioned between ratepayers and shareholders. Further, any sale of excess desalinated water should inure to the benefit of Cal-Am

ratepayers, who are providing the vast majority of the funding for the MPWSP, and should correspondingly benefit from any sales of the product water.

If the MPWSP goes offline for any reason other than routine maintenance or operates below a reasonable capacity for four (4) weeks or more Cal-Am is to notify and confer with the Commission and may require the estimated amount that loss of operation is costing ratepayers and a mechanism to refund/credit ratepayers for such amount. For a more extended outage, if the MPWSP is offline, or slant wells fail to produce at a level that is cost effective for ratepayers for two (2) or more months, Cal-Am is to immediately notify the Commission and to propose a process to have the plant back online with a timeline, or to remove the MPWSP from rates and determine an appropriate mechanism to reimburse ratepayers for any recovery of costs for the time the MPWSP is not used and useful.

The Commission must retain its authority to ensure that Cal-Am ratepayers are paying cost-based rates related to the MPWSP, and its discretion to verify that these costs are appropriate, are project based, and do not include any costs that would otherwise be paid by the Public Agencies in the normal course of business. The Public Agencies have their own transparent processes and procedures. To the extent that these agencies, in exercising their duties to be accountable to their constituencies, find that particular aspects of the MPWSP are not reasonable and cost effective, it is reasonable to require Cal-Am to bring this issue to the Commission for its review and consideration, by filing the appropriate pleading.

Previous Settlement Agreements: The CPUC declined to adopt the Comprehensive Settlement Agreement filed on July 31, 2013 given its age, and that many of the provisions are either moot or require modifications. They do agree that the framework set forth in the agreement provides an appropriate structure, supported by the record, for operations and maintenance costs, financing, ratemaking, and contingency. The CPUC also rejected the Sizing Settlement Agreement, filed on July 31, 2013 stating this settlement is no longer relevant, and that the issues included in it are fully addressed in the decision and decided based on record evidence and the FEIR/EIS. They did adopt the Return Water Settlement and the Brine Discharge Settlement.

WATER SUPPLY PLANNING COMMITTEE

ITEM: DISCUSSION ITEM

4. PURE WATER MONTEREY – COST OF WATER DISCUSSION

Meeting Date:	**August 21, 2018**	**Budgeted:**	**N/A**
From:	**David J. Stoldt General Manager**	**Program/ 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: The District signed a Water Purchase Agreement (WPA) with California American Water Company (Cal-Am) and Monterey One Water (M1W) to sell water derived by the Pure Water Monterey Project. The WPA included an initial estimated cost on the sale of water of $1,720 per acre foot (the "Soft Cap"), which was approved by the California Public Utilities Commission (CPUC) in the Phase 2 decision of application a.12-04-019 (see **Exhibit 4-A**, attached.) The costs for the project were initially estimated at $103 million, with funding provided by a $88 million State Revolving Fund (SRF) Loan and a $15 million grant. In addition, assumptions were made as to the contributions from MCWD and the Monterey County Water Resources Agency (MCWRA) based upon the agreements entered into by M1W with those entities. M1W has now received updated costs on most project components as prepared by the project managers, along with amended information on partner agency grants and capital contributions. M1W staff has also revised the operational and maintenance costs to reflect new estimates prepared by engineering staff. This new information affects anticipated cost of water and may require Commission review and approval. Pursuant to the WPA, prior to the Performance Start Date, if the first year Company Water Rate as calculated is expected to exceed the Soft Cap, the Company shall apply to the CPUC through a Tier 2 advice letter for approval of such rate before the Company shall be required under the WPA to pay an amount greater than the Soft Cap as the Company Water Rate.

The changes and impacts will be presented and discussed at the Water Supply Planning Committee meeting.

EXHIBITS
4-A Selected pages of CPUC A.1204019 Phase 2 Decision
4-B Cost of Water Presentation

Criterion 8: Reasonableness of WPA Terms

Criterion 8 requires that applicant, Agency, and District have agreed upon a WPA whose terms are just and reasonable.

Applicant, Agency and District revised the WPA to address concerns raised in the April 8, and April 25, 2016 Rulings of the assigned Commissioner and assigned ALJ, as described above. The revisions substantially satisfy those concerns. Further, the terms of the revised WPA are just and reasonable with respect to the cost and water quality concerns of Water Plus.

The WPA contains a first year cost cap of $1,720 per acre foot that no party argues is unreasonable. Moreover, the WPA provides that only the actual cost will be charged to Cal-Am and Cal-Am ratepayers. The first year cost will be adjusted downward if the first year cost is less, while a price over $1,720 is subject to Commission review and approval.

No party makes a credible case that the WPA terms are not just and reasonable. Subject to our further directions to applicant below, we find that Criteria 8 is satisfied.

Criterion 9: Reasonableness of the GWR Revenue Requirement

Criterion 9 requires that the revenue requirement for the combination of the GWR with the smaller desalination project is just and reasonable when compared to the revenue requirement for the larger desalination project alone.

In general, future revenue requirements for either the combined GWR with small desalination plant or the larger desalination plant remain uncertain and depend on assumptions about eventual construction costs, financing costs, escalation rates, power delivery method, return water requirements, delays, and lawsuits, among other factors. Nonetheless, there is no credible dispute among

parties as to the reasonableness of the $1,720 per acre-foot first year cost cap. Among other parties, ORA agrees that this is a reasonable cost cap.

Applicant, Agency, and District evaluated the first year indifference cost for the GWR using low and high cost scenarios over a reasonable range of fixed and variable costs measured against the lifecycle total revenue requirement, the net present value of the lifecycle revenue requirement, and the first year revenue requirement.[11] (The indifference point is where ratepayers are indifferent between the larger desalination plant and the GWR/WPA combined with the smaller desalination plant). The first year indifference cost ranges from $1,178 to $2,062 per AFY. The soft cap of $1,720 is reasonable given the wide range of results.

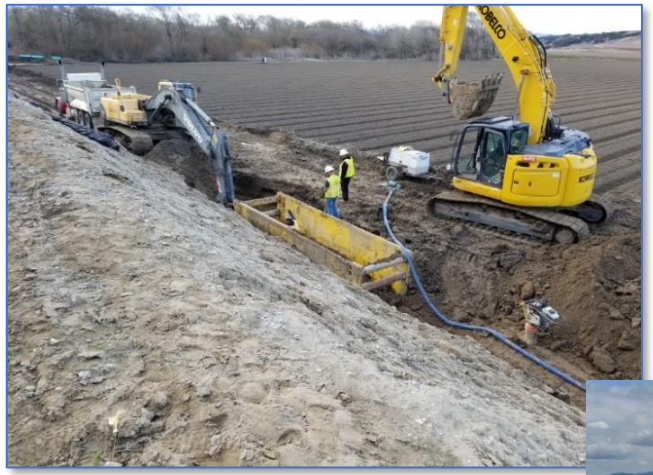
Several parties also argue that a first year premium, if any, is reasonable given several externalities, or non-quantified benefits, of the WPA. We discuss those under broader principles below.

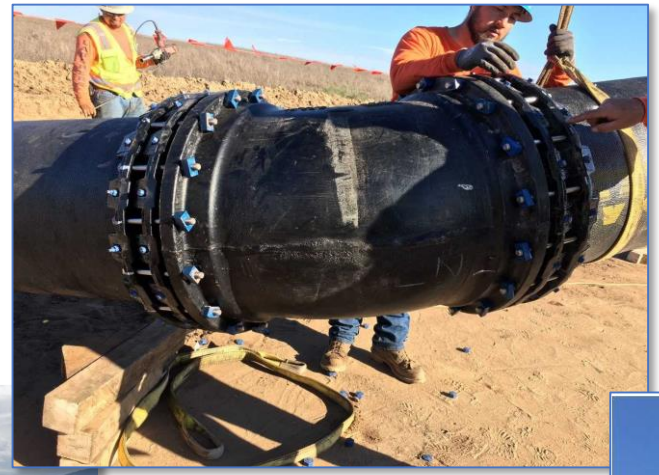
Beyond the first year, future revenue requirements remain uncertain but ORA and other parties argue that lifecycle costs for the two options should also be considered in addition to the first year revenue requirement. A life-cycle analysis provides an opportunity to consider estimated replacement costs; estimated escalation of operation, maintenance and energy costs; and different financing costs. It is entirely plausible that, over the range of variables during the 30-year life of the WPA, the net present value of the revenue requirement for the smaller desalination plant with GWR is less than the net present value of the revenue requirement for the larger plant. It is nearly unanimous among parties, however, that even if a revenue requirement premium is required, the overall

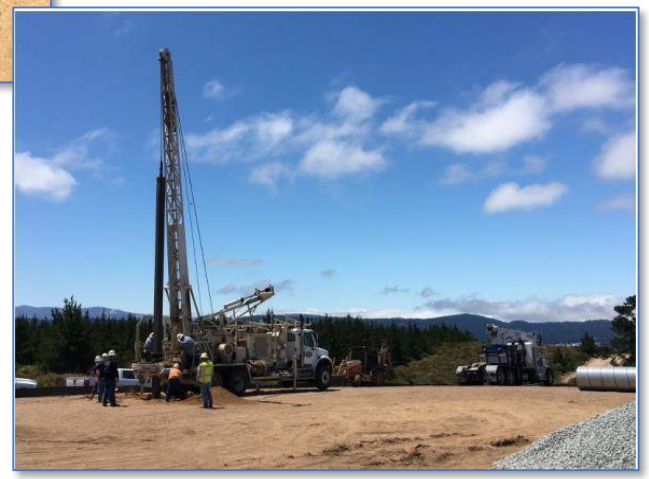
[11] Exh. JE-2 at 7-8.

EXHIBIT 4-B

Pure Water Monterey
Cost of Water Update







Monterey Peninsula Water Management District

Water Supply Planning Committee Meeting - August 20, 2018

Overview

- Review terms of agreements
- Identify areas of changes in costs and funding
  - Capital
  - Operational and maintenance
- Review updated financial projections
  - Water costs per acre foot
  - Debt ratios
- Other Financial Items for Related to Project

Monterey Peninsula Water Management District

Partner Relationships

Advanced Water PF

- Pure Water Monterey: 86.1%
- Marina Coast Water District: 13.9%

Source Waters

- Pure Water Monterey: 54.9%
- Monterey County WRA: 45.1%

Injection Wells

- Pure Water Monterey: 100%

Pipeline

- Pure Water Monterey: 72.2%
- Marina Coast Water District: 27.8%

Black Horse Reservoir

- Pure Water Monterey: 25%
- Marina Coast Water District: 75%

Monterey Peninsula Water Management District

Estimated Project Costs (In Millions)

Project Component	3/30/17 Estimate	8/25/17 Estimate	18-19 Budget*	8/6/18 Estimate	Difference
Advanced Water Purification Facility	$43.8	$60.8	$69.6	$69.7	$0.1
Source Waters (Blanco/Rec)	9.1	11.5	13.3	14.0	0.7
Pipeline Conveyance System	25.5	25.7	16.8	17.8	1.0
Injection Wells	10.1	15.2	15.5	15.7	0.2
Subtotal	$88.5	$113.2	$115.2	$117.2	$2.0
Other Costs (Non SRF/Grant)			0.3	0.3	0.0
Prior Year Soft Costs (Claimed)	14.5	8.2	8.2	11.2	3.0
Total With Soft Costs	$103.0	$121.4	$123.7	$128.7	$5.0

* Of the Totals listed, $ 54.3 Million is budgeted for FY 18-19

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

Grants, SRF Loan, Capital Contributions

Proposition 1 – Recycled Water Grant:	$15 million
Proposition 1 – Stormwater (partial):	$2.5 million
SRF Loan:	$110 million
Anticipated Contribution from FORA	$2.3 million

Does not include other potential grant reimbursements, including those possible from a recently submitted WIIN grant application.

Monterey Peninsula Water Management District

Estimated 1st Year Project Operating Costs (1) (2)

Project Component	3/30/17 Estimate	8/25/17 Estimate	1st Year Estimate	2nd Year Estimate
Power	$1,070,000	$1,466,000	$2,172,000	$1,672,000
Chemicals	647,000	1,411,000	1,486,000	1,531,000
Labor	443,000	508,000	1,021,000	1,052,000
Parts/Material/Other	476,000	674,000	421,000	485,000
Interruptible Rate	104,000	60,000	125,000	129,000
Insurance	50,000	56,000	56,000	58,000
Salinas Pond Lease	164,700	164,700	164,700	170,000
Estimated 1st Yr Costs	$3,090,000	$4,475,000	$5,445,700	$5,097,000

(1) Based on 4,300 Acre Feet, of which Cal Am is responsible for 81% (3,500 acre feet) of costs

(2) Indirect costs estimated at 12.11% included in Power, Chemicals, Labor, Parts/Materials/Other, Insurance

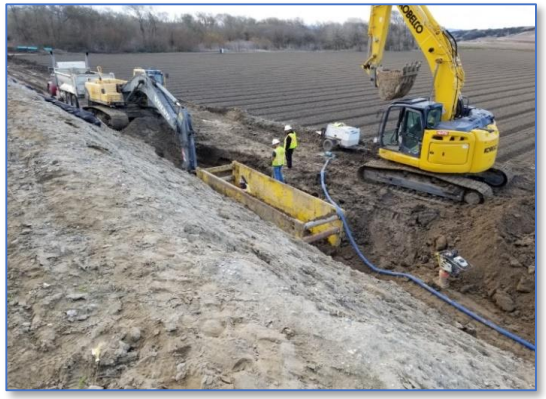
Monterey Peninsula Water Management District

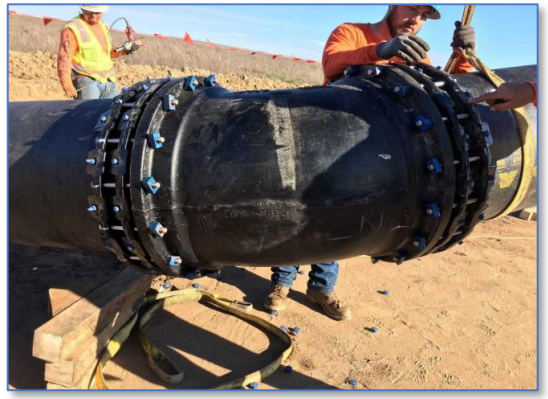
Other Key Financial Information and Ratios

Funding Source	3/30/17 Estimate	8/25/17 Estimate	8/6/18 Estimate	Difference
Reserve Contribution*	$563K	$548K	$125K	($448K)
Annual SRF Debt Service*	$3.4 million	$3.8 million	$4.3 million	$0.5 million
Cal Am Cost Per Acre Foot 1st Yr *	$1,720	$2,005	$1,976	($29)
PWM Debt Ratio *	1.17	1.18	1.03	(0.15)
M1W Debt Ratio w/o PWM	N/A	N/A	2.09	N/A
M1W Total Debt Ratio	1.79	1.69	1.50	(0.19)

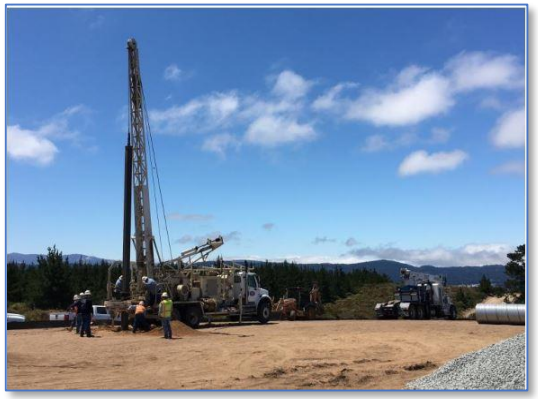
- 1st year reserve contribution will be zero to offset temporary increase in Electricity and 1st yr PWM ratio will be 1.00. Overhead will gradually be increased over time, with it being 2% in first year and 6% in second year. Once the debt service is paid off, those annual debt service funds will be used to set aside additional funds for future capital needs.
- Minimum Required Debt Ratio for M1W is 125%, Recommended Per Policy is 170%.

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT





Questions / Comments?



MONTEREY PENINSULA WATER MANAGEMENT DISTRICT