

AGENDA LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

SPECIAL COMMISSION MEETING
Wednesday, January 5, 2022

11:00 a.m.

The Commission will hold this meeting virtually only, without a physical location for public participation. The meeting is accessible by phone or video conference and livestreaming, in order to avoid public gatherings and until further notice.

Public Participation Instructions

1. **To View this Meeting:** Please click on the following link to the LAFCO of Monterey County YouTube site: <https://www.youtube.com/channel/UCIF6pPx2hn3Ek94Wg0UI7QA>

Then click on the Live Stream of the scheduled meeting.

2. **To Participate in the Meeting:** Use the Zoom app on your smart phone, laptop, tablet or desktop and click on this link: <https://montereycty.zoom.us/j/92940203363>.

The meeting ID is: [929 4020 3363](#). There is no password. To make a public comment, please “Raise your Hand.”

3. **To Participate by Phone:** Please call: +1 669 900 6833
Enter the meeting ID: [929 4020 3363](#) when prompted. There is no participant code – just enter the meeting ID and the pound sign # after the recording prompts you. To make a public comment by phone, please push *9 on your phone keypad.
4. **To Make Remote Public Comments Via Email:** Written comments can be emailed to the Interim Clerk to the Commission at: malukis@monterey.lafco.ca.gov Please include the following Subject Line: “Public Comment – Agenda Item #__”. Written comments must be received by 12:00 Noon, Tuesday, January 4, 2022. All submitted comments will be provided to the Commission for consideration, compiled as part of the record, and may be read into the record.

Call to Order

Roll Call

Pledge of Allegiance

Closed Session

1. [Pursuant to Government Code Section 54956.9\(d\)\(2\), the Commission will confer with legal counsel regarding one matter of significant exposure to litigation.](#)

Public Comments on Closed Session Items

The Commission Recesses for Closed Session Agenda Items

Closed Session may be held at the conclusion of the Commission's Regular Agenda, or at any other time during the course of the meeting, before or after the scheduled time, announced by the Chairperson of the Commission. The public may comment on Closed Session items prior to the Board's recess to Closed Session.

Reconvene on Public Agenda Items

Roll Call

Read Out from Closed Session by LAFCO General Counsel

Read out by General Counsel will only occur if there is reportable action (s).

General Public Comments

Anyone may address the Commission briefly about items not already on the Agenda.

Consent Agenda

All items on the Consent Agenda will be approved in one motion and there will be no discussion on individual items, unless a Commissioner or member of the public requests a specific item to be pulled from the Consent Agenda for separate discussion.

2. [Approve finding, pursuant to AB 361 and in order for the Commission to continue to meet remotely, that the COVID-19 pandemic state of emergency declared by Governor Newsom is still in effect; that the Commission has reconsidered the circumstances of the state of emergency; and that the Monterey County Health Officer continues to recommend social distancing measures for meetings of legislative bodies.](#)

Recommended Action: Pursuant to AB 361 and in order for the Commission to continue to meet remotely, the Commission finds: that the COVID-19 pandemic state of emergency declared by Governor Newsom is still in effect; that the Commission has reconsidered the circumstances of the state of emergency; and that the Monterey County Health Officer continues to recommend social distancing measures for meetings of legislative bodies of local agencies.

3. [Approve Draft Minutes from the December 6, 2021 LAFCO Regular Meeting.](#)
Recommended Action: Approve minutes.

4. [Approve Warrant Register for November 2021.](#)
Recommended Action: Approve warrant register.
5. [Approve Report on Activities of the California Association of Local Agency Formation Commissions.](#)
Recommended Action: Approve report for information only.

Old Business

6. [Consider adoption of a resolution formalizing and effectuating the Commission's December 6, 2021 decision to deny the Monterey Peninsula Water Management District's proposed activation of latent powers to provide and maintain potable water production and distribution services for retail customers \(LAFCO File #21-01\).](#)

Recommended Actions:

- (1) Receive a report from the Executive Officer;
- (2) Receive comments from District representatives;
- (3) Receive public comments;
- (4) Provide for questions or follow-up discussion by the Commission; and
- (5) Consider and adopt a resolution (Attachment 1) that formalizes and puts into effect the Commission's December 6, 2021 decision to deny the District's proposed activation of latent powers to provide and maintain potable water production and distribution services for retail customers.

Executive Officer's Communications

The Executive Officer may make brief announcements about LAFCO activities, for information only.

Commissioners Comments

Individual Commissioners may comment briefly on matters within the jurisdiction of LAFCO. No discussion or action is appropriate, other than referral to staff or setting a matter as a future agenda item.

Adjournment to the Next Meeting

The next LAFCO Regular Meeting is scheduled for Monday, January 24, 2022 at 4:00 p.m. and will be held virtually only by phone, video conferencing and livestreamed.

Alternative Formats and Facility Accommodations: If requested, the agenda packet will be made available in alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 USC 12132) and the federal rules and regulations adopted in implementation thereof. Also, if requested, facility or other accommodations will be made for persons with disabilities. Please contact (831) 754-5838 for assistance.

CLOSED SESSION

1. Pursuant to Government Code Section 54956.9(d)(2), the Commission will confer with legal counsel regarding one matter of significant exposure to litigation.

LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

LOCAL AGENCY FORMATION COMMISSION
P.O. Box 1369 132 W. Gabilan Street, Suite 102
Salinas, CA 93902 Salinas, CA 93901
Telephone (831) 754-5838 www.monterey.lafco.ca.gov

KATE McKENNA, AICP
Executive Officer

DATE: January 5, 2022
TO: Chair and Members of the Formation Commission
FROM: Kate McKenna, AICP, Executive Officer
BY: Kelly Donlon, General Counsel
SUBJECT: Approve finding, pursuant to AB 361 and in order for the Commission to continue to meet remotely, that the COVID-19 pandemic state of emergency declared by Governor Newsom is still in effect; that the Commission has reconsidered the circumstances of the state of emergency; and that the Monterey County Health Officer continues to recommend social distancing measures for meetings of legislative bodies.

SUMMARY OF RECOMMENDATION:

Pursuant to AB 361 and in order for the Commission to continue to meet remotely, the Commission finds: that the COVID-19 pandemic state of emergency declared by Governor Newsom is still in effect; that the Commission has reconsidered the circumstances of the state of emergency; and that the Monterey County Health Officer continues to recommend social distancing measures for meetings of legislative bodies of local agencies.

EXECUTIVE OFFICER'S REPORT:

On September 16, 2021, Governor Newsom signed AB 361. This legislation amends the Brown Act to allow meeting bodies subject to the Brown Act to meet via teleconference during a proclaimed state of emergency in accordance with teleconference procedures established by AB 361 rather than under the Brown Act's more narrow standard rules for participation in a meeting by teleconference. AB 361 provides that if a state or local health official recommends social distancing, a "legislative body" – which is defined to include the Commission – may meet remote remotely after September 30, 2021, provided that within 30 days of the first meeting after September 30, and every 30 days thereafter, the legislative body finds 1) the Governor's proclaimed state of emergency is still in effect; 2) the legislative body has reconsidered the circumstances of the state of emergency, and 3) the Monterey County Health Officer continues to recommend social distancing measures for meetings of legislative bodies and/or the state of emergency continues to directly impact the ability of the members to meet safely in person.

The Monterey County Health Officer has recommended and continues to recommend social distancing measures for meetings of legislative bodies, so the Commission was able to meet remotely on October 25,

the first meeting after September 30, without the need to make the above findings. The Commission made the findings at its special meeting on November 15 and again at a regular meeting on December 6 to continue to meet remotely.

The Commission must make the findings at least every 30 days in order to keep meeting remotely. Due to the greater than 30-day separation between the December and January regular meetings of the Commission, the Commission has scheduled a special meeting on January 5, 2022, in order to consider making the findings. If the Commission makes the findings on January 5, the Commission may continue to meet remotely for the next thirty days. The Commission's first regular meeting in 2022 is January 24, at which time the Commission will have the opportunity to renew the AB 361 findings again.

If the Commission declines to make the findings on January 5, the next Commission meeting on January 24 will be held under the standard Brown Act requirements. Under those requirements, the meeting must be held in a physical location accessible to the public, and if any Commissioner were to want to participate by teleconference, that teleconference location would need to be identified on the agenda, be accessible and open to the public in a manner that enables the public to participate from that location, and the agenda would need to be posted at that location.

LAFCO Counsel Kelly Donlon was consulted in the preparation of this report.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Kate McKenna". The signature is written in a cursive style with a large, stylized "K" and "M".

Kate McKenna, AICP
Executive Officer

LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

**2022
Commissioners**

Chair

Christopher Lopez
County Member

Vice Chair

Mary Ann Leffel
Special District Member

Luis Alejo

County Member

Wendy Root Askew

County Member, Alternate

Kimbley Craig

City Member

Matt Gourley

Public Member

Ian Oglesby

City Member

Warren Poitras

Special District Member

Steve Snodgrass

Public Member, Alternate

Graig R. Stephens

Special District Member, Alternate

Anna Velazquez

City Member, Alternate

Counsel

Kelly L. Donlon

General Counsel

Executive Officer

Kate McKenna, AICP

132 W. Gabilan Street, #102
Salinas, CA 93901

P. O. Box 1369
Salinas, CA 93902

Voice: 831-754-5838

www.monterey.lafco.ca.gov

DRAFT MINUTES

**LOCAL AGENCY FORMATION COMMISSION
OF MONTEREY COUNTY**

Scheduled for Adoption 1/5/22

Monday, December 6, 2021

All Commissioners and public participated in the meeting on December 6, 2021 by Zoom video conference or telephone, in order to avoid public gatherings and until further notice.

Call to Order

The Local Agency Formation Commission was called to order by Chair Lopez at 4:01 p.m.

Roll Call

Commissioner Alejo
Commissioner Root Askew
Commissioner Craig (Arrived at 4:21 p.m.)
Commissioner Gourley
Commissioner Leffel
Commissioner Lopez
Commissioner Oglesby
Commissioner Poitras
Commissioner Snodgrass
Commissioner Stephens
Commissioner Velazquez

Members Absent (Excused Absence)

Commissioner Alejo

Staff Present

Kate McKenna, AICP, Executive Officer
Darren McBain, Principal Analyst
Jonathan Brinkmann, Senior Analyst
Safarina Maluki, Interim Clerk to the Commission/Office Administrator

Also Present

Kelly L. Donlon, General Counsel
Paula de Sousa, Special Counsel
Mike Briley, CPA, CGMA Managing Partner, Hayashi Wayland
Karen Campbell, CPA Senior Audit Manager, Bianchi, Kasavan & Pope

Pledge of Allegiance

Commissioner Poitras led the Pledge of Allegiance.

Public Comments

None.

Special Business

1. Consider finding, pursuant to AB 361 and in order for the Commission to continue to meet remotely, that the COVID-19 pandemic state of emergency declared by Governor Newsom is still in effect; that the Commission has reconsidered the circumstances of the state of emergency; and that the Monterey County Health Officer continues to recommend social distancing measures for meetings of legislative bodies.

Kate McKenna, Executive Officer and Kelly Donlon, General Counsel presented the report.

There were no public comments to this item.

Commissioner Action:

Upon motion by Commissioner Leffel, seconded by Commissioner Root Askew, the Commission finds pursuant to AB 361 and in order for the Commission to continue to meet remotely; the Commission has reconsidered the circumstances of the state of emergency; and that the Monterey County Health Officer continues to recommend social distancing measures for meeting of legislative bodies of local agencies.

Motion Carried (Roll Call Vote)

AYES: Commissioners Root Askew, Gourley, Oglesby, Poitras, Velazquez, Leffel, Lopez,

NOES: None

ABSENT: Alejo, Craig

ALTERNATES: Commissioners Snodgrass, Stephens (non-voting)

ABSTAIN: None.

Closed Session

2. Pursuant to Government Code Section 54956.9(d)(2), the Commission will confer with legal counsel regarding one matter of significant exposure to litigation.

Public Comments

There were no public comments.

The Commission Recesses for Closed Session Agenda Items

Closed Session may be held at the conclusion of the Commission's Regular Agenda, or at any other time during the course of the meeting, before or after the scheduled time, announced by the Chairperson of the Commission. The public may comment on Closed Session items prior to the Board's recess to Closed Session.

The Commission ADJOURNED to Closed Session at 4:07 p.m.

Reconvene on Public Agenda Items

The Commission RECONVENED to Open Session at 4:55 p.m.
Commissioner Craig joined the meeting during Closed Session (4:21 p.m.)

Roll Call

Commissioner Root Askew
Commissioner Craig
Commissioner Gourley
Commissioner Leffel
Commissioner Lopez
Commissioner Oglesby
Commissioner Poitras
Commissioner Snodgrass
Commissioner Stephens
Commissioner Velazquez

Members Absent (Excused Absence)

Commissioner Alejo

General Public Comments

Anyone may address the Commission briefly about items not already on the Agenda.

There were no public comments.

Consent Agenda

All items on the Consent Agenda will be approved in one motion and there will be no discussion on individual items, unless a Commissioner or member of the public requests a specific item to be pulled from the Consent Agenda for separate discussion.

3. Approve Draft Minutes from the October 25, 2021 LAFCO Regular Meeting.
Recommended Action: Approve minutes.
4. Accept Draft Notes from the November 4, 2021 LAFCO Budget and Finance Committee Meeting.
Recommended Action: Accept Notes.
5. Approve Draft Minutes from the November 15, 2021 LAFCO Special Meeting.
Recommended Action: Approve Minutes.
6. Accept Warrant Registers for September and October 2021
Recommended Action: Accept warrant registers
7. Approve Report on Anticipated Agenda Items and Progress Report on LAFCO Special Studies.
Recommended Action: Approve report for information only.
8. Accept CalPERS Retirement Plan Actuarial Valuation Reports for Fiscal Year Ending June 30, 2020. Dated July 2021.
Recommended Action: Accept reports for information only.

9. Approve Report on Activities of the California Association of Local Agency Formation Commissions.

Recommended Action: Approve report for information only.

A question from the public regarding an agenda item procedure was answered by Chair Lopez.

Commissioner Action:

Upon motion by Commissioner Craig, seconded by Commissioner Leffel, Consent Agenda Items #3-#9 were approved by Roll Call Vote.

Motion Carried (Roll Call Vote)

AYES: Commissioners Root Askew, Craig, Gourley, Oglesby, Poitras, Leffel, Lopez

NOES: None.

ABSENT: Commissioner Alejo

ALTERNATES: Commissioners Snodgrass, Stephens, Velazquez (non-voting)

ABSTAIN: None.

New Business

10. Consider the annual Audit Report for Fiscal Year Ending June 30, 2021.

Recommended Actions (by Budget and Finance Committee):

- a) Receive the Executive Officer's report;
- b) Receive a presentation from Ms. Karen Campbell, CPA and Senior Audit Manager, Bianchi Kasavan and Pope;
- c) Receive any public comments;
- d) Provide for any questions or follow-up discussion by the Commission, and
- e) Adopt the final audit for the fiscal year ending June 30, 2021.

Kate McKenna, LAFCO Executive Officer gave a brief report and introduced Karen Campbell, CPA. Karen Campbell, CPA and Senior Audit Manager, Bianchi, Kasavan and Pope, gave a report.

There were no comments from the public

Commissioner Snodgrass requested a change in the report (page 11). Budget & Finance Committee Commissioners Leffel and Lopez agreed to the change.

Commissioner Action:

Upon motion by Commissioner Leffel, seconded by Commissioner Poitras, the Commission:

- a) Received the Executive Officer's report;
- b) Received a presentation from Ms. Karen Campbell, CPA and Senior Audit Manager, Bianchi Kasavan and Pope;
- c) There were no public comments;
- d) Provide for any questions or follow-up discussion by the Commission, and
- e) Adopted the final audit for the fiscal year ending June 30, 2021.

Motion Carried (Roll Call Vote)

AYES: Commissioners Root Askew, Craig, Gourley, Oglesby, Poitras, Leffel, Lopez
NOES: None
ABSENT: Commissioner Alejo
ALTERNATES: Commissioners Snodgrass, Stephens, Velazquez (non-voting)
ABSTAIN: None.

II. Consider the Year-End Financial Statements for Fiscal Year ending June 30, 2021.
Recommended Actions (by Budget and Finance Committee):

- a) Receive the Executive Officer's report;
- b) Receive a presentation from Mr. Mike Briley, CPA and Managing Partner, Hayashi & Wayland;
- c) Receive any public comments;
- d) Provide for any questions or follow-up discussion by the Commission, and
- e) Adopt the official year-end financial statements for the period ending June 30, 2021.

Mike Briley, CPA and Managing Partner, Hayashi Wayland, gave a brief report.

There were no public or Commissioner comments.

Commissioner Action:

Upon motion by Commissioner Leffel, seconded by Commissioner Oglesby, the Commission:

- a) Received reports from the Executive Officer and Mike Briley, CPA and Managing Partner, Hayashi Wayland
- b) Provided for any questions;
- c) There were no public comments.
- d) Provide for any questions or follow-up discussion by the Commission, and
- e) Adopted the official year-end financial statements for the period ending June 30, 2021.

Motion Carried (Roll Call Vote)

AYES: Commissioners Root Askew, Craig, Gourley, Oglesby, Poitras, Leffel, Lopez
NOES: None
ABSENT: Commissioner Alejo
ALTERNATES: Commissioners Snodgrass, Stephens, Velazquez (non-voting)
ABSTAIN: None.

12. Consider for Approval the Quarterly Financial Statements for Period Ending September 30, 2021
Recommended Actions (by Budget and Finance Committee):

- a) Receive the Executive Officer's report;
- b) Receive a presentation from Mr. Mike Briley, CPA and Managing Partner, Hayashi & Wayland;
- c) Receive any public comments;
- d) Provide for any questions or follow-up discussion by the Commission, and
- e) Adopt the financial statements for the period that ended on September 30, 2021.

Mike Briley, CPA and Managing Partner, Hayashi Wayland, gave the report.

There were no public comments.

Commissioner Action:

Upon motion by Commissioner Leffel, seconded by Commissioner Poitras, the Commission:

- a) Received the reports from the Executive Officer and Mike Briley, CPA and Managing Partner, Hayashi Wayland;
- b) Provided for any questions;
- c) There were no public comments;
- d) Adopted the financial statements for the period that ended on September 30, 2021

Motion Carried (Roll Call Vote)

AYES: Commissioners Root Askew; Craig, Gourley, Oglesby, Poitras, Leffel, Lopez,

NOES: None

ABSENT: Commissioners Alejo

ALTERNATES: Commissioners Snodgrass, Stephens, Velazquez (non-voting)

ABSTAIN: None.

13. Continued Consideration of 2021 Municipal Service Review and Sphere of Influence Study for the Monterey Peninsula Water Management District.

Recommended Actions:

- (1) Receive a report from the Executive Officer:
- (2) Reopen the public hearing and public comment period, receive any public comments, and close the public hearing;
- (3) Consider the Public Review Draft 2021 *Municipal Service Review and Sphere of Influence Study for the Monterey Peninsula Water Management District*; and
- (4) Consider and adopt a resolution to:
 - a. Find the action exempt from provisions of the California Environmental Quality Act (CEQA) under Sections 15306 and 15061 (b) (3) of the CEQA Guidelines, and
 - b. Adopt the Study and make the recommended Municipal Service Review and Sphere of Influence determinations in accordance with Government Code sections 56430(a) and 56425 (e), respectively, as set forth in the Study

Darren McBain, Principal Analyst, presented the Monterey Peninsula Water Management District Municipal Service Review and Sphere of Influence Study.

There was one comment made from the public.

Commissioner Action:

Upon motion by Commissioner Oglesby, seconded by Commissioner Root Askew, the Commission adopted a resolution to:

- a. Find the action exempt from provisions of the California Environmental Quality Act (CEQA) under Sections 15306 and 15061 (b) (3) of the CEQA Guidelines, and
- b. Adopted the Municipal Service Review and Sphere of Influence Study for the Monterey Peninsula Water Management District.

Motion Carried (Roll Call Vote)

AYES: Commissioners Root Askew, Craig, Gourley, Oglesby, Poitras, Leffel, Lopez

NOES: None

ABSENT: Commissioners Alejo

ALTERNATES: Commissioners Snodgrass, Stephens, Velazquez (non-voting)

ABSTAIN: None.

14. Continued Consideration of Monterey Peninsula Water Management District (“District”) Application Consisting of: (1) Proposed Activation of the District’s Latent Powers Authority to Provide and Maintain Potable Water Production and Distribution Services for Retail Customers; and (2) a Proposed Amendment of the District’s Sphere of Influence and the Annexation of Approximately 139 Acres (58 parcels) in the Yankee Point and Hidden Hills Areas (LAFCO File #21-01).

Recommended Actions:

- (1) Receive a report and presentation from the Executive Officer;
- (2) Receive an Independent Financial Review Report and presentation from Richard Berkson of Berkson Associates;
- (3) Reopen the public hearing and public comment period;
- (4) Receive comments from the District;
- (5) Receive comments from California American Water Company, affected owner of the subject system;
- (6) Receive public comments;
- (7) Provide for questions or follow-up discussion by the Commission;
- (8) Close the public hearing;
- (9) Consider and adopt a resolution to:
 - a. Consider the Environmental Impact Report (“EIR”) that the District certified in 2020, pursuant to CEQA, to address the potential environmental effects of the proposed activation of latent powers, sphere of influence amendment and annexation;
 - b. Conditionally approve the District’s proposed activation of latent powers to provide and maintain potable water production and distribution services for retail customers; and
 - c. Authorize the Executive Officer to set Monday, January 24, 2022 at 4:00 PM as the Conducting Authority (“protest”) hearing for the activation of latent powers; and
- (10) Consider and adopt a resolution to:
 - a. Consider the EIR that the District certified in 2020, pursuant to the California Environmental Quality Act (“CEQA”), to address the potential environmental effects of the proposed activation of latent powers, sphere of influence amendment and annexation;
 - b. Approve the District’s proposed sphere of influence amendment and annexation; and
 - c. Authorize the Executive Officer to set Monday, January 24, 2022 at 4:00 PM as the Conducting Authority (protest) hearing for the annexation;

Kate McKenna, Executive Officer, and Jonathan Brinkmann, Senior Analyst, presented the report and overview of the materials for commission consideration. Richard Berkson, Berkson Associates, provided an independent review of financial feasibility aspects of the proposal. District General Manager David Stoldt provided comments. George Soneff, Manatt Phelps & Phillips, LLP, provided comments.

There were twenty-four (24) comments from the public.

Commissioner Comments:

Commissioners Root Askew, Oglesby asked questions of Richard Berkson of Berkson Associates;

Chair Lopez and Commissioners Craig, Poitras, Leffel and Root Askew shared comments.

Commissioner Gourley made a motion to deny the resolution as presented by staff. Motion was seconded by Commissioner Craig.

Commissioner Oglesby shared comments and stated his support for the staff-recommended resolution for the record.

Commissioner/Mayor Velazquez shared comments and stated support for the staff report, resolution, and conditions of approval for the record.

Executive Officer Kate McKenna addressed procedural items with the Commission:

- A request for direction on the proposed sphere of influence and annexation aspect of the District's proposal.
- If the Commission chooses to deny the District's proposed activation of latent powers, staff suggests direction in the motion to return at the next special meeting on January 5 2022 with a draft resolution that would document the denial findings and determinations.
- If the Commission believes that a continuance is warranted in order to tackle outstanding issues and address them as additional conditions of approval, then staff suggests that the agenda item be continued to the next regular meeting on January 24.

Commissioner Gourley adjusted his motion to approve the sphere of influence amendment and annexation and to direct staff to bring back a new draft resolution with the rationale and determinations of denial of the latent powers at the special meeting on January 5.

Commissioner Leffel asked a question of General Counsel.

Commissioner Stephens expressed concerns.

Commissioner Root Askew proposed a substitute motion to accept staff's recommendations with a special additional condition that asks LAFCO General Counsel to address the satellite water district issues. Commissioner Oglesby seconded the substitute motion.

In response to a question, Executive Officer McKenna and General Counsel Donlon expressed uncertainty as to whether the District would continue to negotiate agreements and/or resolutions to identified issues if the Commission passed a motion to deny the proposed activation of latent powers.

Commissioner Root Askew restated the substitute motion to move forward with staff recommendation to approve activation of latent powers with conditions listed and an additional condition that addresses the concerns regarding satellite districts.

Substitute Motion Failed (Roll Call Vote)

AYES: Commissioners Root Askew, Oglesby,

NOES: Commissioners Craig, Gourley, Poitras, Leffel, Lopez

ABSENT: Commissioners Alejo

ALTERNATES: Commissioners Snodgrass, Stephens, Velazquez (non-voting)

ABSTAIN: None.

Commissioner Gourley restated the amended motion to:

1. Deny the District's request for activation of latent powers, with direction to staff to return with a revised draft resolution outlining the Commission's rationale for denial and making determinations for the Commission's consideration at the January 5, 2022 special meeting, and
2. Approve, as conditioned, the proposed 139-acre sphere of influence amendment and annexation.

Commissioner Craig seconded the motion.

Motion Carried (Roll Call Vote)

AYES: Commissioners Craig, Gourley, Poitras, Leffel, Lopez

NOES: Commissioners Root Askew, Oglesby

ABSENT: Commissioners Alejo

ALTERNATES: Commissioners Snodgrass, Stephens, Velazquez (non-voting)

ABSTAIN: None.

Executive Officer's Communications

The Executive Officer may make brief announcements about LAFCO activities, for information only.

15. **Communications**

- a) Possible Formation of Pajaro Valley Healthcare District.

Executive Officer, Kate McKenna presented the report. The report was for information only.

Commissioner Snodgrass commented on the possible formation of the Pajaro Valley Healthcare District.

There were no public comments.

Commissioners Comments

Individual Commissioners may comment briefly on matters within the jurisdiction of LAFCO. No discussion or action is appropriate, other than referral to staff or setting a matter as a future agenda item.

Commissioner Lopez shared information about an event on December 17th in King City. They are looking for volunteers.

General Counsel Report

General Counsel, Kelly Donlon advised that there were no reportable items from the Closed Session this evening.

Adjournment to the Next Meeting

The meeting was adjourned at 7:51p.m. The next Special LAFCO Meeting is scheduled for Wednesday January 5, 2022 at 11:00 p.m.

LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

LOCAL AGENCY FORMATION COMMISSION
P.O. Box 1369 132 W. Gabilan Street, Suite 102
Salinas, CA 93902 Salinas, CA 93901
Telephone (831) 754-5838 www.monterey.lafco.ca.gov

KATE McKENNA, AICP
Executive Officer

DATE: January 5, 2022
TO: Chair and Members of the Formation Commission
FROM: Kate McKenna, AICP, Executive Officer
PREPARED BY: Safarina Maluki, Interim Clerk to the Commission/Office Administrator
SUBJECT: LAFCO Warrant Register – November 2021

SUMMARY OF RECOMMENDATION:

It is recommended that the Commission approve the warrant register.

EXECUTIVE OFFICER'S REPORT:

Attached is the list of LAFCO checks issued by Hayashi & Wayland for November 2021. Expenses and deposits are typical for the second quarter of the fiscal year.

Respectfully Submitted,



Kate McKenna, AICP
Executive Officer

Attachment: Warrant Register for November 2021, Hayashi & Wayland Accounting & Consulting, LLP

LAFCO
LOCAL AGENCY FORMATION COMMISSION
OF MONTEREY COUNTY
WELLS FARGO BANK WARRANT REGISTER
NOVEMBER 2021

Attachment 4.1

DATE	CK#	NAME	DESCRIPTION	CHECK AMOUNT	DEPOSIT AMOUNT	ACCOUNT BALANCE
Beginning Balance 11/1/2021						\$ 36,735.08
11/01/2021	TFR	County of Monterey	Funds Transfer		150,000.00	186,735.08
11/02/2021	EFT	CalPERS Health	November 2021 Health Insurance	7,259.38		179,475.70
11/06/2021	EFT	AT&T Mobility	Telephone Service 9/18/21-10/17/21	144.00		179,331.70
11/10/2021	EFT	QuickBooks Payroll Service	For Payroll Period Ending 11/5/21 Paid 11/12/21	12,844.18		166,487.52
11/12/2021	7182	Denise Muñoz	For Payroll Period Ending 11/5/21 Paid 11/12/21	-		166,487.52
11/12/2021	7183	Jonathan Brinkmann	For Payroll Period Ending 11/5/21 Paid 11/12/21	-		166,487.52
11/12/2021	7184	Kathryn M. McKenna	For Payroll Period Ending 11/5/21 Paid 11/12/21	-		166,487.52
11/12/2021	7181	Darren J McBain	For Payroll Period Ending 11/5/21 Paid 11/12/21	-		166,487.52
11/12/2021	EFT	CalPERS Retirement	CalPers Retirement Contribution	3,417.39		163,070.13
11/12/2021	EFT	CalPERS 457 Program	457 Deferred Compensation Contribution	2,885.05		160,185.08
11/12/2021	EFT	EDD	State Payroll Tax Deposit	1,084.32		159,100.76
11/12/2021	EFT	EFTPS	Federal Payroll Tax Deposit	2,690.54		156,410.22
11/12/2021	7185	Berkson Associates	Subcontract PCA Research and Review for October 2021	4,993.75		151,416.47
11/12/2021	7186	Best Best & Krieger	Professional legal services relating to MPWMD	10,947.50		140,468.97
11/12/2021	7187	City of Greenfield.	Lafco Fee Refund: Mira Monte Annexation	218.25		140,250.72
11/12/2021	7188	FedEx Office	Outside Printing	57.95		140,192.77
11/12/2021	7189	IBM Corporation	Leased Computers for Lafco Staff 11/1/21-11/30/21	43.69		140,149.08
11/12/2021	7190	MBS Business Systems	Copy Machine Rental	648.21		139,500.87
11/12/2021	7191	Sunrise Express	Binder Deliveries	885.06		138,615.81
11/17/2021	EFT	Comcast	Telephone Services from 10/27/21-11/26/21	120.11		138,495.70
11/17/2021	EFT	Payment Remittance Center	Office Supplies, Telephone, Postage, Misc. Expenses	923.16		137,572.54
11/24/2021	EFT	QuickBooks Payroll Service	For Payroll Period Ending 11/19/21 Paid 11/26/21	10,601.83		126,970.71
11/25/2021	EFT	Wolfpack Insurance Services, Inc.	Dental and Vision Insurance	876.50		126,094.21
11/26/2021	7192	Darren J McBain	For Payroll Period Ending 11/19/21 Paid 11/26/21	-		126,094.21
11/26/2021	7193	Jonathan Brinkmann	For Payroll Period Ending 11/19/21 Paid 11/26/21	-		126,094.21
11/26/2021	7194	Kathryn M. McKenna	For Payroll Period Ending 11/19/21 Paid 11/26/21	-		126,094.21
11/26/2021	EFT	CalPERS Retirement	CalPers Retirement Contribution	2,853.74		123,240.47
11/26/2021	EFT	CalPERS 457 Program	CalPers 457 Deferred Compensation Contribution	2,422.79		120,817.68
11/26/2021	EFT	EDD	State Payroll Tax Deposit	888.98		119,928.70
11/26/2021	EFT	EFTPS	Federal Payroll Tax Deposit	2,140.40		117,788.30
11/26/2021	7195	Clark Pest Control of Stockton, Inc.	Pest Control Maintenance	160.00		117,628.30
11/26/2021	7196	Colantuono, Highsmith & Whatley, PC	General Legal Services through 10/31/21	140.00		117,488.30
11/26/2021	7197	The Monterey County Herald	Legal Notices	1,278.49		116,209.81
11/26/2021	7198	William R. Nicholson Consulting	Contract Staff for October 2021	1,850.00		114,359.81
11/26/2021	7199	Universal Staffing Inc	Temporary Clerical Work for W/E 11/6,11/13,11/20	5,712.00		108,647.81
11/26/2021	7200	Bruce Lindsey	Monthly Building Rent	2,397.69		106,250.12
11/30/2021	INT	Wells Fargo Bank	Interest		1.26	106,251.38
					80,484.96	150,001.26
Ending Balance 11/30/2021						\$ 106,251.38



2022 Events Calendar

JANUARY

- 10** CALAFCO U Webinar
- 19-21 CA Assn. of Sanitation Agencies Conference (Palm Springs)
- 21** CALAFCO Board of Directors Meeting (Sacto)
- 21-22& League New Mayor & Council Academy
27-28 (Virtual)
- 26** CALAFCO Monthly EO meeting (Virtual)
- 28** CALAFCO Legislative Committee (Virtual)

FEBRUARY

- 23** CALAFCO U Webinar
- 23** CALAFCO Monthly EO meeting (Virtual)

MARCH

- 11** CALAFCO Legislative Committee (Virtual)
- 23-25** CALAFCO Staff Workshop (Newport Beach)

APRIL

- 5-8 Fire District Assn. Annual Meeting (Napa)
- 20-21 CA State Assn. of Counties Leg Days (Sacto)
- 22** CALAFCO Board of Directors Meeting (Irvine)
- 29** CALAFCO Legislative Committee (Virtual)

MAY

- 3-6 Assn. of CA Water Agencies Conference (Sacto)
- 17-18 CA Special Districts Assn. Leg Days (Sacto)

JUNE

- 17** CALAFCO Legislative Committee (Virtual)

JULY

- 22** CALAFCO Board of Directors Meeting (Virtual)
- 29** CALAFCO Legislative Committee (Virtual)

AUGUST

- 10-12 CA Assn. of Sanitation Agencies Annual Conference (Tahoe)
- 22-25 CA Special Districts Assn. Conference (Palm Springs)

SEPTEMBER

- 7-9 League Annual Conference (Long Beach)
- 14-16 Regional Council of Rural Counties Annual Conference (Napa)
- 16** CALAFCO Legislative Committee (2023) (Virtual)

OCTOBER

- 7** CALAFCO Legislative Committee (Sacto)
- 19-21** CALAFCO Annual Conference (Newport Beach)
- 20** CALAFCO Annual Business Meeting (Newport Beach)
- 21** CALAFCO Board of Directors Meeting (Newport Beach)

NOVEMBER

- 4** CALAFCO Legislative Committee (Sacramento)
- 14-18 CA State Assn. of Counties Annual Conference (Orange County)
- 29-30 Assn. of CA Water Agencies Conference (Indian Wells)

DECEMBER

- 1-2 Assn. of CA Water Agencies Conference (Indian Wells)
- 2** CALAFCO Board of Directors Meeting (Sacto)

Sharing Information and Resources

CALIFORNIA ASSOCIATION OF
LOCAL AGENCY FORMATION
COMMISSIONS

1020 12th Street, Suite 222
Sacramento, CA 95814

916-442-6536

For current information and other CALAFCO resources please visit www.calafco.org

Updated December 13, 2021



LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

KATE McKENNA, AICP
Executive Officer

LOCAL AGENCY FORMATION COMMISSION
P.O. Box 1369 132 W. Gabilan Street, Suite 102
Salinas, CA 93902 Salinas, CA 93901
Telephone (831) 754-5838 www.monterey.lafco.ca.gov

DATE: January 5, 2022

TO: Chair and Members of the Commission

FROM: Kate McKenna, AICP, Executive Officer

PREPARED BY: Jonathan Brinkmann, Senior Analyst

SUBJECT: **Monterey Peninsula Water Management District** – Adoption of a resolution formalizing and effectuating the Commission’s December 6, 2021 decision to deny the District’s proposed activation of latent powers to provide and maintain potable water production and distribution services for retail customers (*LAFCO File #21-01*)

SUMMARY OF RECOMMENDATIONS:

It is recommended that the Commission:

1. Receive a report from the Executive Officer;
2. Receive comments from District representatives;
3. Receive public comments;
4. Provide for questions or follow-up discussion by the Commission; and
5. Consider and adopt a resolution (Attachment 1) that formalizes and puts into effect the Commission’s December 6, 2021 decision to deny the District’s proposed activation of latent powers to provide and maintain potable water production and distribution services for retail customers.

EXECUTIVE OFFICER’S REPORT:

Background

In February 2021, the Monterey Peninsula Water Management District submitted an application (*LAFCO File #21-01*) requesting that LAFCO authorize two separate actions for the District:

- (1) Activate the District’s latent powers authority to provide and maintain potable water production and distribution services for retail customers (in accordance with Measure J, a 2018 voter-approved initiative, and for the purpose of proceeding with acquisition of Cal-Am’s Monterey Main water system through negotiation or a condemnation proceeding); and
- (2) Approve an amendment of the District’s sphere of influence and the annexation of approximately 139 acres (58 parcels) in the Yankee Point and Hidden Hills areas.

LAFCO held a public hearing for this item on October 25, which was continued to December 6, 2021. Staff recommended conditional approval of both elements of the District’s proposal. Staff’s recommendation was expressed in the Executive Officer’s report, draft resolutions, and other related attachments prepared for the December 6 continued public hearing, as well as in a presentation made by the Executive Officer at the hearing.

On December 6, the Commission voted 5-2 to deny the requested activation of the District's latent powers authority and approve the sphere of influence amendment and annexation (LAFCO Resolution #21-11). As part of its December 6 denial decision, the Commission directed staff to prepare a new draft resolution – reflecting the Commission's reasons for denial of the proposed latent powers activation and making written determinations as required by the Cortese-Knox-Hertzberg Act (“CKH Act”) – for the Commission's consideration at its January 5, 2022 special meeting. The attached revised draft resolution incorporates concerns that commissioners voiced at the December 6 public meeting and additional relevant information drawn from the overall public record.

Discussion

Revised determinations in the attached draft resolution (Attachment 1) reflect the Commission's reasons for denial as discussed in the December 6, 2021 public hearing, including:

- Potential increased costs to Cal-Am's remaining water and wastewater customers (“satellite systems”) including Chualar, a designated Disadvantaged Community;
- Annual property tax revenue losses to local agencies;
- Financial feasibility concerns; and
- Monterey Peninsula water supply concerns.

Since the December 6 meeting, LAFCO has received additional correspondence (Attachment 2).

California Environmental Quality Act (“CEQA”) Compliance

Regarding the Commission's disapproval of the proposed activation of latent powers, the denial is statutorily exempt as provided by California Public Resources Code section 21080.

Reconsideration

Should the Commission act to adopt the draft resolution making determinations, any person or affected agency may file a written statement with the LAFCO Executive Officer requesting amendments to, or reconsideration of, the resolution. The person or agency shall file the written request **within 30 days** of the adoption of the resolution. Pursuant to the CKH Act (Government Code section 56895): “The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration.”

The Executive Officer shall place the request on the agenda of the next meeting of the Commission for which notice can be given. At that meeting, the Commission shall consider the request and receive any oral or written testimony. At the conclusion of its consideration, the Commission may approve with or without amendment, wholly, partially, or conditionally, or disapprove the request.

If the Commission disapproves the request, it shall not adopt a new resolution making determinations. If the Commission approves the request, with or without amendment, wholly, partially, or conditionally, the Commission shall adopt a resolution making determinations that shall supersede the resolution previously issued. The determinations of the Commission shall be final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change.

Conducting Authority (“Protest”) Proceedings and Hearing

Following adoption of a resolution denying a proposal, protest proceedings are not applicable pursuant to Government Code section 56884.

Conclusion

The Commission's December 6, 2021 denial decision concluded that based on the evidence in the record, the District's proposed activation of latent powers was inconsistent with several “factors to be considered in the review of a proposal” pursuant to Government Code sections 56668 and 56824.10 *et seq.* Revised determinations in the attached draft resolution reflect the Commission's December 6 discussion and

decision. Adoption of this resolution would formalize and effectuate the Commission's December 6 decision to deny the District's latent powers activation request.

In accordance with Government Code section 56884, unless waived by the Commission, no similar proposal involving the same or substantially the same territory shall be initiated for one year after the date of adoption of the resolution terminating proceedings.

Respectfully Submitted,



Kate McKenna, AICP
Executive Officer

Attachments:

1. Draft resolution, disapproving the proposed activation of latent powers
2. Correspondence received from noon December 6 to noon December 22, 2021

CC:

Monterey Peninsula Water Management District

County of Monterey

Cities of: Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand City, Seaside, and Marina

Special Districts and local government agencies: Monterey County Regional Fire District, Seaside Basin Watermaster, Marina Coast Water District, Monterey Peninsula Airport District, Pebble Beach Community Services District, Santa Lucia Community Services District, Cachagua Fire Protection District, Carmel Highlands Fire Protection District, Cypress Fire Protection District, Moss Landing Harbor District, Salinas Valley Memorial Healthcare System, Monterey County Mosquito Abatement District, Carmel Valley Recreation and Park District, Monterey Peninsula Regional Park District, Resource Conservation District of Monterey County, Carmel Area Wastewater District, Monterey Regional County Sanitation District, Monterey One Water, Seaside County Sanitation District, Monterey Regional Waste Management District, North County Fire Protection District, Castroville Cemetery District, North County Recreation and Park District, Monterey County Water Resources Agency, Salinas Valley Basin Groundwater Sustainability Agency, and Monterey Bay Unified Air Pollution Control District

School Districts: Monterey Peninsula Unified School District, Pacific Grove Unified School District, Carmel Unified School District, Washington Union School District, North Monterey County Unified School District, Salinas Union High School District, South Monterey County Joint Union High School District, Monterey Peninsula College, and Hartnell Community College District, Monterey County Office of Education

Known interested persons or groups: Baker Manock & Jensen PC; Sarah Leeper, Esq.; Manatt, Phelps & Phillips, LLP; Lozano Smith, Attorneys at Law; Anthony Lombardo, Esq.; WaterPlus (Water Ratepayers of the Monterey Peninsula); Public Water Now; LandWatch Monterey County; Rick Heuer, President of Monterey Peninsula Taxpayers Association; George Fontes, President of Salinas Basin Water Alliance; N. Monica Lal, Interim CEO of Monterey Peninsula Chamber of Commerce; Norm Groot, Executive Director of Monterey County Farm Bureau; Sustainable Agriculture and Energy; and over a hundred members of the public who submitted written comments.

LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

RESOLUTION NO. 21 – XX

RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION
DISAPPROVING THE MONTEREY PENINSULA WATER MANAGEMENT
DISTRICT'S PROPOSED ACTIVATION OF LATENT POWERS, (LAFCO FILE 21-01)

WHEREAS, the Monterey Peninsula Water Management District (“District”) filed an application for proposed actions consisting of: (1) activation of latent powers to provide and maintain potable water production and distribution services for retail customers; and (2) sphere of influence amendment and annexation of approximately 139 acres outside current District boundaries, in the Yankee Point and Hidden Hills areas in unincorporated Monterey County, and the application was heretofore filed and accepted for filing by the Executive Officer of this Local Agency Formation Commission; and

WHEREAS, this Resolution only pertains to the proposed activation of latent powers aspect of the District’s application. The proposed sphere of influence amendment and annexation aspect of the District application was approved by LAFCO Resolution #21-11 on December 6, 2021; and

WHEREAS, the District Board of Directors initiated, and is in support of, the proposed activation of latent powers; and

WHEREAS, the District currently exercises the following powers as allowed by District Law (California Water Code, Appendix Chapter 118, Sections 118-1 to 118-901), and pursuant to LAFCO Resolution 21-09:

- Water management [Sections 118-301, 118-325, 118-325.5, 118-326, 118-327, 118-328],
- Water augmentation [Sections 118-325 and 118-325.5],
- Water reuse and reclamation [Sections 118-327, 118-328, and 118-371],
- Water conservation, [Sections 118-328],
- Limited water services to seven golf courses and one school within Del Monte Forest (Classes of Service: Wholesale delivery of potable water, retail delivery of reclaimed water) [Sections 118-301, 118-325, 118-325.5, 118-326, 118-328],
- Environmental protection and mitigation [Sections 118-2, Sections 118-301, and 118-325], and
- Permitting and regulatory compliance [Sections 118-256, 118-301, 118-308, 118-325, 118-347 to 118-349, 118-357, 118-358, 118-360 to 118-366, 118-369, 118-370; and

WHEREAS, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (hereinafter the “Cortese-Knox-Hertzberg Act”), Government Code section 56050.5 defines the term “latent service or power” as “those services, facilities, functions, or powers authorized by the principal act under which [a] district is formed, but that are not being exercised as determined by the commission. . . ;” and

WHEREAS, the Cortese-Knox-Hertzberg Act, Government Code section 56040 defines the term “function” as “any power granted by law to a local agency to provide designated governmental or proprietary services or facilities for the use, benefit, or protection of persons or property;” and

WHEREAS, the Cortese-Knox-Hertzberg Act, Government Code section 56021, includes activation of the power to exercise new or different functions or classes of services (“latent power”) as a change of organization for which LAFCO approval must be sought before exercise of the latent power may occur; and

WHEREAS, the District Board of Directors held a duly noticed public hearing and passed Resolution No. 2020-12 dated August 17, 2020 and Resolution No. 2021-03 dated May 17, 2021 (whereby Resolution No. 2021-03 replaced Resolution No. 2020-12), requesting, in part, that LAFCO activate the latent power to provide potable water production and distribution services for retail customers within District boundaries in accordance with the requirement of law [Government Code sections 56824.10, 56824.12, and 56824.14]; and

WHEREAS, in October 2020, the District, as the Lead Agency, certified, pursuant to the California Environmental Quality Act (“CEQA”), an Environmental Impact Report (“EIR”) for this proposal for “Potential Acquisition of Monterey Water System and District Boundary Adjustment,” and

WHEREAS, as requested in the District’s proposal and as authorized by Sections 118-325, 118-326, and 118-328 of the District Law, the District requested that LAFCO activate latent District powers to provide and maintain potable water production and distribution services for retail customers throughout its territory (in addition to the District’s eight retail customers within the Del Monte Forest that the District already serves); and

WHEREAS, a Certificate of Filing was issued for the application on July 30, 2021; and

WHEREAS, the Executive Officer, pursuant to Government Code section 56665, reviewed this proposal and prepared a report recommending that the Commission conditionally approve the District’s proposed activation of latent powers, and has furnished a copy of this report to each person entitled to a copy; and

WHEREAS, the Executive Officer, pursuant to Government Code section 56658, set October 25, 2021 as the hearing date on this proposal and provided public notice as required by law; and

WHEREAS, on October 25, 2021 the Executive Officer made introductory remarks recommending that the Commission open the public hearing and public comment period on the District’s proposal and then continue the public hearing to December 6, 2021 to allow additional time for review of the large volume of public correspondence submitted to LAFCO regarding this proposal; and

WHEREAS, on October 25, 2021 the Commission opened the public hearing and public comment period on the District’s proposal, received comments related to the continuance, and then continued the public hearing to December 6, 2021; and

WHEREAS, on December 1, 2021 the Executive Officer completed and circulated a written report for the December 6, 2021 continued public hearing, and the said report continued to recommend conditional approval of the District’s proposal with several revisions based on additional information and review following completion of the October 25, 2021 agenda packet; and

WHEREAS, this Commission, on December 6, 2021 received a presentation from the Executive Officer outlining the recommended conditional approval of the District's proposal, received a report and presentation from LAFCO's independent financial consultant Richard Berkson, reopened the public hearing, heard from the District, heard from California American Water Company ("Cal-Am"), received public comment, considered the proposal and the report of the Executive Officer, and considered the factors determined by the Commission to be relevant to this proposal, including, but not limited to, factors specified in Government Code sections 56668, 56824.12, and 56824.14; and

WHEREAS, on December 6, 2021 the Commission voted to approve a Municipal Service Review and Sphere of Influence Study prepared for the District (Agenda item #13, approved LAFCO Resolution #21-10) as well as the second element of the District's proposal as noted above (139-acre sphere of influence amendment and annexation in the Yankee Point and Hidden Hills areas, by adoption of LAFCO Resolution #21-11); and

WHEREAS, on December 6, 2021 a majority of members of this Commission voted to deny the requested activation of latent powers and directed staff to agendize for January 5, 2022 a revised draft resolution with written determinations reflecting the Commission's December 6, 2021 deliberations resulting in denial; and

WHEREAS, upon disapproval by the Commission, no further proceeding shall be taken on the proposal, and no similar proposal shall be initiated for at least one year, unless the commission waives these requirements after finding that the requirements are detrimental to the public interest (Government Code section 56884). No protest proceeding under Government Code section 57000 *et seq.* is required.

NOW, THEREFORE, the Local Agency Formation Commission of Monterey County does HEREBY RESOLVE, DETERMINE, AND ORDER as follows:

Section 1. The foregoing recitals are true and correct.

Section 2. The Commission has considered the necessary factors set forth for changes of organization in the Cortese-Knox-Hertzberg Act, Government Code section 56668 (a) through (q). The Commission hereby determines that the District has failed to demonstrate certain required factors to activate requested latent power, as outlined below, and hereby terminates the proceedings regarding the District's proposed activation of latent powers.

Government Code section 56668(b):

b) The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas.

1) The Commission hereby determines that the proposal's effects on property tax revenues would be detrimental to the finances and operations of local public agencies, including the County of Monterey, local cities, special districts, and school districts.

The requested activation of latent District powers would enable the District to proceed with attempting to acquire the Cal-Am Monterey Main water system through either a negotiated purchase or a condemnation proceeding. Public, tax-exempt ownership of what is currently a privately owned water system is projected to reduce annual property tax revenues to local agencies by approximately \$1.7 million per year.

As an application completeness matter, the District engaged HdL Coren and Cone to conduct a property tax analysis and transmitted the analysis to LAFCO on July 12, 2021. The analysis evaluated projected property tax losses from public acquisition of the Cal-Am Monterey Main Water System for affected local taxing agencies. The analysis projected approximately \$1.3 million in annual property tax revenue losses to 40 affected taxing agencies. If school districts that are assumed to receive backfill funding from the State of California were to not receive State funding for these projected losses, total projected property tax revenue losses would be \$1.7 million annually. Over a twenty-year period (fiscal years 2021 to 2040), the reduction in property tax revenues to the County of Monterey and other agencies would – based on current projections and data – be more than \$75 million according to the District’s Raftelis report.

In making its determinations, this Commission has reviewed, among other evidence, the Executive Officer’s report for October 25, 2021. The report provided a detailed summary of the proposal’s property tax impact and was supplemented by the December 6, 2021 report. The report and draft resolution for December 6 included a staff-recommended condition of approval requiring the District to use best efforts to enter into legally permissible agreements with the 14 most-affected local agencies to resolve the dispute regarding the potential lost property tax revenue. The agreements would be intended to mitigate the property tax revenue reductions for a period of generally five to seven, or longer if warranted. The staff-recommended condition required the District to submit evidence that the disputes had been reasonable addressed and delineated examples of what type of evidence would be acceptable as follows:

- Documentation from duly authorized representatives of the affected local agencies that the disputes had been resolved
- Statement from the District that an affected agency did not respond to the District’s written notification of project potential property tax losses, or
- Documentation that the District conducted reasonable negotiations to resolve the disputes, as further defined, to the satisfaction of the Executive Officer.

At the December 6 public hearing, the Commission voiced concerns that, notwithstanding the staff-recommended condition, such dispute resolution is too speculative and local agencies may be left with unresolved financial losses. The Commission also reviewed written comments submitted by local agencies as described under factor (j), below, as well as comments made by the Monterey County Regional Fire District’s fire chief during the December 6 meeting regarding the incomplete status of a potential future agreement between the Water Management District and the Fire District.

In making its determinations, the Commission also reviewed an August 19, 2021 letter from Cal-Am whereby it stated:

- “In sum, the HdL Memorandum and its supporting materials present an incomplete and inaccurate picture of the property tax losses that will be suffered by numerous public agencies if MPWMD’s request to activate latent powers is approved and its plan to acquire Cal-Am’s water system is allowed to proceed.

Based on the totality of evidence in the record, the Commission determines that property tax reductions resulting from the requested latent powers activation would represent a substantial and unwarranted long-term impact to local agencies. The staff-recommended condition of approval requiring dispute-resolution agreements would not necessarily

provide adequate guarantees of interim financial relief to the local agencies.

- 2) The Commission further determines that potential future cost increases to areas served by Cal-Am’s remaining “satellite” water systems and wastewater systems would be an undue hardship for residents of these communities. The likely future rate increases have no certainty of being adequately limited or mitigated through the California Public Utilities Commission’s rate-setting processes.

The District’s proposed activation of latent powers was to provide and maintain potable water production and distribution services for retail customers to implement the District’s efforts to implement Measure J, which was approved by District voters in 2018. Pursuant to Measure J, the District seeks to acquire Cal-Am’s Monterey Main Water System, which is almost completely within the District’s jurisdictional boundaries. The planned acquisition effort does not include five small “satellite” water systems in the area, but outside of the District’s jurisdictional boundaries (Ambler Park, Chualar, Garrapata, Ralph Lane, and Toro). Chualar, one of the satellite-system communities, is designated as a disadvantaged community, i.e. a community with a median household income less than 80% of the statewide median, by the California State Water Resources Control Board.

The District’s acquisition would also not include eight small wastewater operations owned by Cal-Am located both within and outside the District’s boundaries: the Carmel Valley Ranch, Indian Springs, Las Palmas, Oak Hills, Pasadera, Spreckels, Village Green, and White Oaks systems.

In considering factor (b) and making determinations, the Commission has reviewed – among other evidence – the Executive Officer’s December 6 report. The report discussed the possibility of future rate increases in Cal-Am’s remaining water and wastewater systems, as well as mechanisms, such as the California Public Utilities Commission rate-setting process, that may help limit future increases.

The Commission has also considered an October 11, 2021 report prepared by LAFCO’s independent financial consultant, Berkson Associates, which stated in part:

- “These smaller operations could experience some reduction in scale efficiencies and resulting impacts on costs depending on the number of additional staff required by these small systems. While these impacts may not directly impact Cal-Am, a portion of increased costs could be added to the rate base of these small operations and thereby increase rates to ratepayers served by those small operations.”

A November 22, 2021 supplemental memo by Berkson Associates further stated, in part:

- “It is correct that excluding a number of small water and sewer systems from MPWMD’s acquisition of the Monterey system will reduce current economies of scale and could result in increased costs to serve those systems. The specific impacts on rates have not been determined; assertions of rates doubling have not been documented and impacts could be mitigated in a number of ways[.]”
- “During the eminent domain trials, Cal-Am may be awarded severance charges for lost value attributable to the remaining systems; the potential magnitude of charges and their rate effects are not known.”

The Commission has also considered written comments submitted by Cal-Am and several residents of the remaining Cal-Am water and wastewater systems and described under factor (n), below.

Based on the totality of evidence in the record, the Commission determines that that potential future cost increases to areas served by Cal-Am’s remaining “satellite” water systems and wastewater systems would be a probable undue hardship for residents of these communities.

Government Code section 56668(c):

- c) *The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.*

As described in the determinations for factor (b) above, and in light of the overall body of information and analysis for the proposed latent powers activation, the Commission has identified substantial unresolved impacts to social and economic interests regarding:

1. Property tax revenue losses to affected local taxing agencies and school districts.
2. Potential future rate increases in the community of Chualar, a designated disadvantaged community, and other water and wastewater systems in Monterey County that would remain under Cal-Am ownership pursuant to Measure J; and

Based on the totality of evidence in the record, the Commission hereby determines that these impacts are inconsistent with the goals and objectives of the Cortese-Knox-Hertzberg Act with respect to factor (c).

Government Code section 56668(j):

- j) *The comments of any affected local agency or other public agency.*

As of this writing, LAFCO has received the following comment letters from affected local agencies:

- Monterey County Regional Fire District (“MCRFD”) on March 23, 2021.
- Monterey Peninsula Unified School District (“MPUSD”) on March 19, 2021.
- Baker Manock & Jensen PC (attorneys for the Seaside Groundwater Basin Watermaster) on March 26, 2021.
- MCRFD on September 14, 2021.
- MPUSD on October 22, 2021.
- MPUSD on December 1, 2021.

In its September 14, 2021 letter, on page 2, MCRFD wrote:

- “We do appreciate the MPWMD analysis as it has identified the expected losses to the Fire District as a result of annexation. However, MPWMD has failed to provide appropriate mitigation for the Fire District’s property tax losses.”
- “The analysis indicates the Fire District stands to lose \$139,591.60 annually. This does not take into consideration either the average growth or CPI to those properties and the subsequent ongoing losses of these taxes. For the Fire District, this loss equates to one firefighter position. As we have discussed on multiple occasions, staffing our fire engines continues to be a struggle and even the loss of a single firefighter is a critical loss for our District, adversely impacting our mission to provide emergency medical, fire and rescue response.”

In its December 1, 2021 letter, on page 2, MPUSD wrote:

- “While we appreciate the level of attention and work that has been done to date on

this complicated transaction, we note that the analysis of the effects of the Water District’s acquisition of the Cal-Am property on School District funding continues to be insufficient. Approval of the Proposal, without proper mitigation measures or protections in place, creates a serious risk that the School District and other Impacted Agencies will be faced with a significant funding shortfall.”

The Commission determines that the agency comments cited above provide additional documentation of impacts related to property tax revenue losses and potential future rate increases in remaining Cal-Am systems, as discussed under factors (b) and (c), above.

Government Code section 56668(k):

- k) *The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.*

The Commission has considered feasibility-related information in the record for this proposal, including the Berkson Associates report dated October 11, 2021. Among other findings generally in agreement with the methodology used in the District’s financial feasibility analysis (the Raftelis Report), key findings in the Berkson report also cautioned that:

- “The eminent domain process will resolve many of the uncertainties of the District proposal, however, the outcome may reduce the District proposal’s financial feasibility.”
- “In the event of District loss, abandonment, or failure to finance and acquire the system, significant additional District costs could be incurred.”
- “Public acquisition and ownership of the Cal-Am system will reduce property tax revenue to public agencies.”

In considering factor (k), the Commission determines that the District’s proposal and other evidence in the record does not adequately establish that District acquisition and ongoing ownership of the water system would be financially feasible.

Government Code section 56668(l):

- l) *Timely availability of water supplies adequate for projected needs as specified in Government Code section 65352.5.*

The District develops and maintains 20-year water supply projections. Among other approved and proposed projects, the District, Monterey One Water, and Cal-Am are working to develop a replacement water supply known as the Pure Water Monterey Expansion project, which would include several water sources from the Salinas Valley. The project’s goal is to meet the 2009 State Water Resources Control Board’s cease and desist order, as extended in 2016, to terminate unauthorized diversions from the Carmel River.

In considering factor (l), the Commission finds that the District’s proposal, as well as the evidence in the record, does not adequately establish that the District’s current efforts to expand the Peninsula area’s water supply will be sufficient to meet current and future needs, especially in times of drought, and to do so without utilizing water from the Salinas Valley and potentially harming the Salinas Valley groundwater basin.

Government Code section 56668(n):

- n) *Any information or comments from the landowner or owners, voters, or residents of the affected territory.*

As of this writing, LAFCO has received nine comment letters from attorneys representing Cal-Am, ten response letters from the District, and numerous written comments from members of the public as delineated in Exhibit “A,” attached hereto and made a part hereof. Numerous written comments submitted to LAFCO, as well as public comments made at the December 6, 2021 hearing, were in support of the District’s proposal. However, comments made by those in opposition to the proposal raised significant concerns, as discussed below.

Cal-Am’s October 19, November 1, and November 23, 2021 letters provided comments regarding potential increased costs to other Cal-Am-owned satellite systems, property tax revenue losses to affected local taxing agencies, financial feasibility, and other issues.

Rick Heuer, President of the Monterey Taxpayers Association (“MPTA”), sent an October 20, 2021 email and November 10, 2021 letter and Tom Rowley, Vice President of the MPTA, sent emails dated October 20 and December 5, 2021, in which they both raised concerns regarding the District’s finances in light of MPTA’s lawsuit challenging the District’s collection of its water supply charge through the District’s Ordinance 152.

The Salinas Valley Water Alliance’s October 22, 2021 letter, Monterey Peninsula Chamber of Commerce’s October 25 and December 3, 2021 letters, Monterey County Farm Bureau’s November 22, 2021 letter, and Sustainable Agriculture and Energy’s (“SAGE”) December 6, 2021 letter each raised concerns regarding water supplies. Specifically, the Monterey County Farm Bureau’s letter stated (pg. 2):

- “While Monterey County Farm Bureau has no position on the public ownership of the water supply system of the Monterey Peninsula, it makes little to no sense to grant additional authority to an agency that will ultimately rely on a single facility resource for the water it supplies to its customers, especially if that source water supply is interruptible and not drought-proof.”

Nancy Belton’s November 23, 2021 email, James Dunivan’s November 23, 2021 letters, Ralph Keill’s, Courtney Brady’s, and Robert M.’s December 1, 2021 letters, Robert LaBrier’s, Rose Inductivo’s, and Sabas Jandayan’s December 2, 2021 emails, M. Sincoff’s December 3, 2021 email, and Terri Chaplan’s and Ken Hoppe’s December 5, 2021 emails each raised concerns that the District’s buyout of the Cal-Am Monterey Water System would result in increased costs to ratepayers of Cal-Am’s other satellite systems.

John Tilley’s October 20, 2021 email and November 9, 2021 letter, Sam Teel’s October 20, 2021 email, Rudy Fischer’s October 22, 2021 letter, Alan Romero’s, Jacquei Miller’s, and Lawrence Walker’s December 2, 2021 emails, Frank Emerson’s December 3, 2021 email, and John Reinhardt’s and Paul Bruno’s December 4, 2021 emails each raised concerns about the District’s ability to run the Cal-Am Monterey Water System, water supplies, and/or related concerns.

In reviewing all public correspondence that was received, the Commission hereby determines that the comments specified above provide additional evidence documenting impacts related to property tax revenue losses and potential future rate increases in remaining Cal-Am systems, as discussed under factors (b), (c), (k), and (l), above.

Government Code section 56668(p):

- p) *The extent to which the proposal will promote environmental justice. As used in this subdivision, "environmental justice" means the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to the location of public facilities and the provision of public services, to ensure a healthy environment for all people such that the effects of pollution are not disproportionately borne by any particular populations or communities.*

Future rate-increase impacts to low-income County residents served by water and wastewater systems that would remain under Cal-Am ownership, particularly in the designated disadvantaged community of Chualar as described as part of factor (b) above, represent an environmental justice concern.

Additionally, Cal-Am's October 19, 2021 letter on page Tab C-16 stated:

- "Many customers of the Remaining Systems are moderate and low-income customers. As noted, Chualar is a recognized disadvantaged community. MPWMD's proposal would foist significant additional costs on the remaining customers, raising substantial issues of environmental justice."

Based on the totality of evidence in the record, the Commission hereby determines that the proposal is inconsistent with the Cortese-Knox-Hertzberg Act's objective of promoting environmental justice.

Section 3. The Commission has considered the necessary factors set forth for activation of latent powers in the Cortese-Knox-Hertzberg Act, Government Code sections 56824.10 through 56824.14. The Commission hereby determines that the District has failed to demonstrate that it will have sufficient revenue to carry out the proposed new or different functions or class of services, and failed to demonstrate it has the ability to finance an unsuccessful eminent domain action, as outlined below:

At the December 6, 2021 public hearing, the Commission voiced concerns over whether the District has the financial capability to provide potable water production and distribution services for retail customers. The Commission also voiced concerns over the potential costs to the District if it is unsuccessful in an eminent domain action against Cal-Am.

The Commission considered Berkson Associate's October 11, 2021 memo which, on page 5, detailed the financial consequences to the District if it loses, abandons, or fails to finance and acquire Cal-Am's system. Berkson's memo finds significant District costs could be incurred, specifically as much as \$34 million.

Additionally, the Commission considered Cal-Am's October 19, 2021 letter on page 5 and Tab C, which stated, in part:

- "The mere prosecution of the eminent domain lawsuit carries considerable financial risk for MPWMD, and hence to Monterey residents...If MPWMD fails in its eminent domain lawsuit, it will be required to pay all attorneys' fees and costs incurred by Cal-Am, as well as its own – with nothing to show for it...Data from the Claremont and Apple Valley cases suggest that a \$25 million to \$34 million loss estimate is conservative. There has been no proof that MPWMD could sustain such a financial loss without impairment of operations or assumption of costs new debt."

Section 4. The Commission has considered, as a part of its deliberations, the District's proposed activation of latent powers (including its plan for services prepared pursuant to Government Code sections 56663 and 56824.12), the oral presentations and written communications received prior to the close of the public meeting, as well as the factors set forth for changes of organization in Government Code section 56668, and the requirements of Government Code section 56824.10, *et seq.* Following such consideration, based on the evidence in the record the Commission determines the proposal to be inconsistent with one or more of the requirements and factors set forth in the relevant provisions of the Government Code for activation of latent powers as described above, and hereby disapproves the District's proposed activation of latent powers.

Section 5. The Commission's action in disapproving the proposal is statutorily exempt from California Environmental Quality Act ("CEQA") pursuant to Public Resources Code section 21080.

Section 6. If any provision of this resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this resolution that can be given effect without the invalid provision or application, and to this end the provisions of this resolution are severable.

Section 7. The Executive Officer is hereby authorized and directed to mail certified copies of this resolution in the manner and as provided in Section 56882 of the Government Code.

UPON MOTION of Commissioner _____, seconded by Commissioner _____, the forgoing resolution is adopted this 5th day of January 2022 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Christopher Lopez, Chair
Local Agency Formation Commission of Monterey County

ATTEST: I certify that the within instrument is a true and complete copy of the original resolution of said Commission on file within this office.

Witness my hand this ___ day of _____, 2022

By: _____
Kate McKenna, AICP,
Executive Officer

Exhibit A – List of Correspondence Received from Cal-Am, the District, and Members of the Public from March 15, 2021 to December 21, 2021

- Letter from Edward Burg, Esq., Manatt, Phelps & Phillips, LLP (attorneys for Cal-Am) on March 15, 2021.
- Letter from George Soneff, Esq., Manatt, Phelps & Phillips, LLP on April 14, 2021.
- Letter from David Stoldt, District General Manager, on April 21, 2021.
- District memo on June 3, 2021.
- Letter from George Soneff, Esq., Manatt, Phelps & Phillips, LLP on June 16, 2021.
- District letter on June 22, 2021.
- Email from Margaret-Anne Coppernoll, Ph. D., on June 28, 2021.
- Email from Ron Weitzman on June 28, 2021.
- Email from Michael Baer on June 28, 2021.
- District letter on July 12, 2021.
- Letter from Edward Burg, Esq., Manatt, Phelps & Phillips, LLP on August 19, 2021.
- District letter on August 30, 2021.
- Letter from Edward Burg, Esq., Manatt, Phelps & Phillips, LLP on September 2, 2021.
- Letter from George Soneff, Esq., Manatt, Phelps & Phillips, LLP on October 19, 2021.
- Letter from Melodie Chrislock, Director of Public Water Now, on October 20, 2021.
- District letter on October 20, 2021.
- Letter from George Soneff, Esq., Manatt, Phelps & Phillips, LLP on October 22, 2021.
- District letter on October 22, 2021.
- Salinas Basin Water Alliance letter on October 22, 2021.
- Letter from Melodie Chrislock, Director of Public Water Now, on October 23, 2021.
- Letter from Ron Weitzman, President of WaterPlus, on October 24, 2021.
- Letter from Monica Lal, Interim CEO of the Monterey Peninsula Chamber of Commerce, on October 25, 2021.
- Letter from George Soneff, Esq., Manatt, Phelps & Phillips, LLP on November 1, 2021.
- Letter from George Riley, Monterey Peninsula Water Management District Board Director, on November 1, 2021
- Letter from John Tilley on November 9, 2021.
- Letter from Melodie Chrislock, Director of Public Water Now, on November 10, 2021.

- *Letter from Rick Heuer, President of the Monterey Peninsula Taxpayers Association, on November 10, 2021.*
- *District letter on November 15, 2021.*
- *District letter on November 17, 2021.*
- *Letter from Norm Groot, Executive Director of Monterey County Farm Bureau, on November 22, 2021.*
- *Letter from George Soneff, Esq., Manatt, Phelps & Phillips, LLP on November 23, 2021.*
- *Two letters from James Dunivan on November 23, 2021.*
- *Letter from Melodie Chrislock, Director of Public Water Now, on November 29, 2021.*
- *Letter from Anita Dyer on November 30, 2021.*
- *Letter from Davis Todhunter on November 30, 2021.*
- *Letter from Melodie Chrislock, Director of Public Water Now, on December 1, 2021.*
- *Letter from Robert M. on December 1, 2021.*
- *Letter from Ralph Keill on December 1, 2021.*
- *Letter from Courtney Brady on December 1, 2021.*
- *Letter from Barbara Moore on December 2, 2021.*
- *Letter from Susan Schiavone on December 2, 2021.*
- *Letter from Margaret-Anne Coppernoll, Ph. D., on December 2, 2021.*
- *Letter from Saoirse Folsom on December 3, 2021.*
- *Letter from Monica Lal, Interim CEO of the Monterey Peninsula Chamber of Commerce, on December 3, 2021.*
- *Letter from Vicki Williams on December 3, 2021.*
- *Letter from Timothy Sanders on December 5, 2021.*
- *Letter from Joe Desmond, Executive Director of Sustainable Ag and Energy Monterey on December 6, 2021.*
- *Letter from Marianne Gawain, President of the League of Women Voters of Monterey County on December 20, 2021.*
- *Letter from Kathy West on December 21, 2021.*
- *Over a hundred emailed comments from members of the public received from October 15, 2021 to December 21, 2021.*

Table of Contents for correspondence and written comments received from noon on December 6 to noon on December 22, 2021:

1. [December 1, 2021 letter from Robert M.](#) [Page 2]
2. [December 7, 2021 email from Melodie Chrislock, Director, PUBLIC WATER NOW](#) [Page 3]
3. [December 7, 2021 email from Tony Campbell](#) [Page 6]
4. [December 7, 2021 email from Melodie Chrislock, Director, PUBLIC WATER NOW](#) [Page 7]
5. [December 8, 2021 email from Ron Weitzman, President, WaterPlus](#) [Page 10]
6. [December 10, 2021 email from Ron Weitzman, President, WaterPlus](#) [Page 13]
7. [December 11, 2021 email from Ron Weitzman, President, WaterPlus](#) [Page 15]
8. [December 12, 2021 email from Ron Weitzman, President, WaterPlus](#) [Page 17]
9. [December 15, 2021 email from Ron Weitzman, President, WaterPlus](#) [Page 18]
10. [December 16, 2021 email from Ron Weitzman, President, WaterPlus](#) [Page 20]
11. [December 20, 2021 letter from Marianne Gawain, President, League of Women Voters of Monterey County](#) [Page 21]
12. [December 21, 2021 letter from Kathy West](#) [Page 23]
13. [December 21, 2021 email from Manatt, Phelps & Phillips, LLP \(California American Water Company \[“Cal-Am”\] counsel\)](#) [Page 24]
14. [December 21, 2021 email from Ron Weitzman, President, WaterPlus](#) [Page 32]

December 1, 2021

LAFCO
DEC 7 2021

Kate McKenna
Executive Officer
Local Agency Formation Commission of Monterey County
132 West Gabilan Street, Suite 102
Salinas, CA 93901

Subject: Monterey Peninsula Water Management District 2021 Sphere of Influence, Annexation, and Latent Power Activation Proposal

Dear Ms. McKenna,

As a resident in the Village Green development in Carmel Valley I stand to be affected by the Monterey Peninsula Water Management District's proposed takeover of California American Water. California American Water is my water and wastewater provider but my community lies outside the boundaries of the Water Management District. If California American Water's main system on the Peninsula were to be condemned, while I would still be served by California American Water, the cost to serve my community would increase substantially. California American Water would lose its hub. Economies of scale would be lost. The overhead that is now being spread across customers would suddenly fall on a dramatically smaller group. All of this is likely to result in rate increases for my area to which I strongly object.

The LAFCO staff report says that costs to water and wastewater customers in my area are likely to increase. California American Water's own analysis shows that costs could as much as double. This is an unacceptable impact, which I hope you will take into serious consideration in deciding whether or not the District should proceed with its plan to condemn Cal Am.

Voters on the Monterey Peninsula approved Measure J in 2018. But the vast majority of customers in California American Water's satellite and wastewater systems did not have the opportunity to participate in that election. Now, without ever having had a say, we are being asked to face a potential doubling of rates for a proposal that in no way benefits us. In fact it presents greater challenges to provide our communities with essential services. LAFCO's responsibility is to take into consideration impacts throughout the entire county. Please deny the Monterey Peninsula Water Management District's application.

Sincerely,

HORA VP

From: mwchrislock@redshift.com
Sent: Tuesday, December 7, 2021, 3:31 PM
To: McKenna, Kate x5016; Maluki, Safarina x5019
Subject: Please add this to the record

Please send this to all LAFCO commissioners and add it to the record. Thank you.

Melodie Chrislock
Managing Director
PUBLIC WATER NOW
mwchrislock@redshift.com

<https://www.montereyherald.com/2021/12/07/lafco-board-torpedoes-monterey-peninsula-districts-buyout-of-cal-am/>

Monterey Herald – December 7, 2021
LAFCO board torpedoes Monterey Peninsula district’s buyout of Cal Am
By DENNIS L. TAYLOR

SALINAS — Despite overwhelming support from the public for the Monterey Peninsula Water Management District’s buyout of California American Water’s main distribution systems, despite a clear majority of voters supporting the buyout via a 2018 ballot measure, despite an inter-governmental agency’s own staff and paid consultants supporting the district’s financial feasibility of the acquisition, a majority of agency commissioners sided with Cal Am and voted to halt the process on Monday.

Measure J was crafted by Public Water Now and required the water district to acquire Cal Am. It passed in 2018 with 56% of the votes cast.

The Local Agency Formation Commission, or LAFCO, was charged with determining whether the district could exercise what’s called its latent powers — in short, whether the district has the operational and financial wherewithal to run a different operation like retail water distribution. LAFCO’s own independent analysis showed that it can.

LAFCO’s role is to encourage the orderly formation of local governmental agencies, preserve agricultural land resources, discourage urban sprawl and encourage the efficient delivery of local government services. Much of its work concerns cities annexing unincorporated areas into their boundaries.

But the water district said the agency inserted itself into water supply issues that are outside of its purview, something a court could possibly rule on in the future. LAFCO voted 5-2 to dismiss the water district’s application.

Some of the commissioners representing special districts voiced support for Cal Am because

they didn't want to lose property tax revenue. The water district, as a government agency, does not pay property tax. That was a point that was pushed hard by Cal Am. But the water district showed that none of the special districts would lose more than 1% of its annual revenue, and many would lose only a fraction of 1%.

Richard Berkson of Berkson Associates was hired by LAFCO to perform an independent analysis of the district's ability to acquire Cal Am's main water system as well as financial impacts of the buyout. His analysis showed the district was capable of acquiring Cal Am. Commissioner Ian Oglesby asked whether anything he heard from other commissioners or from Cal Am attorney George Soneff Monday would change his mind about his analysis.

"No," Berkson said.

Other commissioners raised issues that were not a part of what the district considers the scope of LAFCO's task Monday. For example, Commissioner Matt Gourley, from Soledad, voted against the buyout because he said he is a strong proponent of the private sector.

"The government can't run anything efficiently," he said.

And Commissioner Kimbley Craig, from Salinas, argued about water supply issues in a manner that evoked a Salinas Valley vs. Monterey Peninsula perspective, referring to water in the valley as "our water."

LAFCO has a seven-member board with only two regular board members from the Monterey Peninsula. Everyone else is from the Salinas Valley, based on the addresses of their offices. The final vote was 5-2 with the majority being mostly from the Salinas Valley.

Oglesby, who is mayor of Seaside, voted for granting the district latent powers. Commissioner Mary Ann Leffel, who represents the Monterey Regional Airport District and the only other Peninsula commissioner, sided with Cal Am, citing concerns about lost revenue for her district.

In addition to Oglesby, the Peninsula gained another vote on Monday from Commissioner Wendy Root Askew who is normally an alternate but on Monday sat in for Commissioner Luis Alejo who recused himself because of a conflict of interest.

District General Manager Dave Stoldt on Tuesday said he wasn't surprised by the vote.

"Even though we have been responsive and supplied a plethora of materials, I question how well it was read by commissioners," he said. "It's easier to kick the can down the road than to make a decision."

Stoldt said he is conferring with the water district's attorney and some board members about how to proceed with a lawsuit. He is calling for a special meeting of the board this week to discuss legal action during a closed session.

In court, a judge would consider the administrative record of LAFCO to ascertain whether it

came to its decision based on fact. Stoldt said the court would find “no factual basis for the decision (LAFCO) made.”

Catherine Stedman, a spokeswoman for Cal Am, said on Tuesday that the LAFCO board evaluated the information provided by both sides and “fairly came to the right conclusion.” She cited the amount of money (\$2 million, she said) the district has spent in its pursuit of a takeover.

“Given that a condemnation of our system is clearly more complex, lengthy and expensive than any of the proponents anticipated, we hope (the water district) will reevaluate its stance on feasibility and elect to stop this effort now,” she said in an email. “Their chance of success is extremely limited and the costs they are foisting on the public continue to skyrocket. It’s in the best interest of the community for the district to abandon this effort and turn their attention to working collaboratively with Cal Am and other water agencies in the county to solve our regional water issues.”

Commissioner Chris Lopez, who represents the Salinas Valley on the Board of Supervisors, voted against the district and cited the impact it would have on the community of Chualar, which is in his supervisorial district. The water district would not be acquiring all of Cal Am’s assets, only its main system. There are small satellite systems Cal Am would continue to operate including one feeding Chualar.

Cal Am says its charges are based on a system-wide economy of scale — providing a greater volume of water with the same fixed assets. If it loses those assets, Cal Am said it would have to raise rates on customers of the smaller water systems, including Chualar.

But that won’t happen, Stoldt said. Since Chualar is a disadvantaged community, the California Public Utilities Commission ensures that its water rates can only rise in unison with the inflation rate. In short, Chualar is protected from Cal Am raising its rates to supplement the loss of its main system.

“There was a lot of parochial behavior protecting special interests instead of acting as a single body,” Stoldt said. “As the lawsuit moves forward, we will initiate ongoing discussions.”

From: Tony Campbell <yotbell@gmail.com>
Sent: Tuesday, December 7, 2021 5:12 PM
To: McKenna, Kate x5016 <McKennaK@monterey.lafco.ca.gov>
Subject: Questions for Commissioners

Does this story make you nervous?

<https://www.latimes.com/california/story/2021-12-06/former-la-dwp-general-manager-agrees-to-plead-guilty-bribery-charge>

Greed will not prevail

Tony Campbell

From: mwchrislock@redshift.com
Sent: Tuesday, December 7, 2021, 5:47 PM
To: McKenna, Kate x5016; Maluki, Safarina x5019
Subject: Please distribute to LAFCO commissioners

One more. Please distribute to the commissioners and add to the record. – Thanks.

Melodie Chrislock
Managing Director
PUBLIC WATER NOW
<http://www.publicwaternow.org>
mwchrislock@redshift.com

Monterey County Weekly – December 7, 2021

https://www.montereycountyweekly.com/blogs/news_blog/public-buyout-of-cal-am-poised-for-courts-after-local-board-tells-peninsula-voters-they/article_4b18d752-57a0-11ec-8f7f-2b75bb928e9f.html

Public buyout of Cal Am poised for courts after local board tells Peninsula voters they cannot purchase the investor-owned utility.

Christopher Neely

Local Agency Formation Commission of Monterey County Chair Chris Lopez was one of five votes against the Monterey Peninsula Water Management District becoming a public water utility.

Monterey Peninsula residents in 2018 voted with a more than 55 percent majority to initiate a public buyout of investor-owned water utility California American Water. On Dec. 6, an arcane local government board went against their own staff’s recommendation and effectively told the majority of Peninsula voters “no.”

Now, the lawsuits begin.

The nay vote by the appointed Local Agency Formation Commission of Monterey County does not end this yearslong and politically divisive effort to acquire the Cal Am water system; however, it will create significant delays. The commission voted against activating the powers of the Monterey Peninsula Water Management District—the public water distribution agency that is leading the acquisition of Cal Am—to become a water utility in a 5-2 vote. Dave Stoldt, general manager of the MPWMD, says not having that power weakens their position in the eminent domain court proceeding likely required to buyout Cal Am—an eminent domain case Cal Am claims would be the largest in California history.

“I think whether we have those powers would heavily impact the judge’s decision,” Stoldt says.

Stoldt says the five commissioners who decided against activating the water district’s power went rogue and called the vote “a slap in the face” to LAFCO’s staff who spent months building their recommendation to the board to vote in favor.

Commissioner Chris Lopez, the District 3 representative for the Monterey County Board of Supervisors, said he was concerned with how a buyout of Cal Am’s Peninsula system would impact five satellite Cal Am systems that serve smaller communities such as Chualar and Corral de Tierra. These five satellite systems would remain under Cal Am and the utility has argued that the cost to serve these systems could potentially increase if the Cal Am loses the Peninsula system, which provides an economy of scale that allows satellite system costs to remain low.

However, neither side could resolve the question mark around the hypothetical argument. Lopez said he was not comfortable moving forward without that answer.

Commissioner Pete Poitras positioned his no vote around his concern that the Monterey Regional Fire District would lose property tax revenue if Cal Am’s private water system became a public system and did not have to pay property taxes. The argument that various public agencies, including Monterey Peninsula Unified School District, would lose some of its tax base by losing Cal Am has weighed on LAFCO’s deliberations for months. The water district was negotiating a deal with the fire district to cover the lost property tax revenue, however, those negotiations were still ongoing Dec. 6 and Poitras said, as a rep for the district, he could not support it until that question was answered.

“There is nothing in stone. We’re all taking it on good word that we will be made whole after the districts lose tax revenue,” Poitras said.

Commissioner Matt Gourley similarly said he was concerned about the lack of certainty around the fire district, but also said his vote was influenced by his own politics.

“I’m definitely from the private sector, not the public sector, I don’t think government can run anything efficiently and I think we’ve seen that,” Gourley said. “The what-ifs, especially hearing from [Monterey Regional Fire District Chief Michael] Urquides earlier about not knowing what his funding mechanism is moving forward just scares the hell out of me.”

Mary Ann Leffel, who represents the Monterey Airport special district, said she could not support the motion because there were “too many questions.” However, during the meeting, Leffel did not pose any specific questions related to the buyout. The *Weekly* was unable to reach Leffel by press time.

Commissioner Wendy Root Askew, District 4 Supervisor for Monterey County Board of Supervisors, was one of two yes votes, with Seaside Mayor Ian Oglesby. Root Askew

said she did not understand what the basis of the denial was. She said she shared concerns about property tax revenue loss, but said if LAFCO voted in favor, a condition of the approval was that MPWMD had to resolve all property tax questions before its latent powers were activated.

“LAFCO cannot sustain a lawsuit where the water district has to fight until the end, and even go to the Supreme Court,” Oglesby said. “The only legally defensible position for me is to approve.”

Since the commissioners rejected the recommended resolution to activate the water district’s power to become a water utility—a resolution which staff considered legally defensible and would hold up in court—LAFCO staff now have to reverse course and draft a resolution that recommends the opposite, and that recommendation will also have to be legally defensible and hold up in court. LAFCO commissioners will vote on that resolution on Jan. 5.

Alvin Edwards, chair of MPWMD, says the district board is preparing next steps. A lawsuit against the commissioner’s decision is imminent, he says.

From: Ron Weitzman <ronweitzman@redshift.com>
Sent: Wednesday, December 8, 2021 10:59 AM
To: waterplus@redshift.com
Subject: IMPORTANT WATER ARTICLE IN TODAY'S HERALD

All: Is Monterey County dysfunctional or what? It is hard to imagine a more irresponsible decision than the one the LAFCO board made on Monday by putting a boulder right in the middle of the road to freedom of the Monterey Peninsula from the costly clutches of Cal Am and the CPUC. Commissioner Matt Gourley supported Cal Am because he believes the private sector can run anything more efficiently than the government. Cal Am does not run the water system independently with efficiency created by competition as a private business would; it runs it as a monopoly, with no competition, regulated by the CPUC, which is a government (like LAFCO, inefficient?) agency. So, like the other LAFCO naysayers, his argument for rejection holds no water. The commission in fact was stupidly irresponsible to make the decision it did. That is because either decision, yea or nay, could lead to a lawsuit, but, while the water management district would pay LAFCO for defending a yea vote in court, LAFCO will have to pay its own costs for defending its nay vote if it loses, which it will. The money to pay for that loss will come from county coffers and simply add to any loss of county revenue due to the municipalization of Cal Am. --Ron

MONTEREY PENINSULA WATERMANAGEMENT DISTRICT

LAFCO rejects Cal Am buyout

By Dennis L. Taylor

dtaylor@montereyherald.com

SALINAS >> Despite overwhelming support from the public for the Monterey Peninsula Water Management District's buyout of California-American Water's main distribution systems, despite a clear majority of voters supporting the buyout via a 2018 ballot measure, despite an inter-governmental agency's own staff and paid consultants supporting the district's financial feasibility of the acquisition, a majority of agency commissioners sided with Cal Am and voted to halt the process on Monday.

Measure J was crafted by Public Water Now and required the water district to acquire Cal Am. It passed in 2018 with 56% of the votes cast.

The Local Agency Formation Commission, or LAFCO, was charged with determining whether the district could exercise what's called its latent powers— in short, whether the district has the operational and financial wherewithal to run a different operation like retail water distribution. LAFCO's own independent analysis showed that it can.

LAFCO's role is to encourage the orderly formation of local governmental agencies, preserve agricultural land resources, discourage urban sprawl and encourage the efficient delivery of local government services. Much of its work concerns cities annexing unincorporated areas into their boundaries.

But the water district said the agency inserted itself into water supply issues that are outside of its purview, something a court could possibly rule on in the future. LAFCO voted 5-2 to dismiss the water district's application.

Some of the commissioners representing special districts voiced support for Cal Am because they didn't want to lose property tax revenue. The water district, as a government agency, does not pay property tax. That was a point that was pushed hard by Cal Am. But the water district showed that none of the special districts would lose more than 1% of its annual revenue, and many would lose only a fraction of 1%.

Richard Berkson of Berkson Associates was hired by LAFCO to perform an independent analysis of the district's ability to acquire Cal Am's main water system as well as financial impacts of the buyout. His analysis showed the district was capable of acquiring Cal Am. Commissioner Ian Oglesby asked whether anything he heard from other commissioners or from Cal Am attorney George Soneff Monday would change his mind about his analysis.

"No," Berkson said.

Other commissioners raised issues that were not a part of what the district considers the scope of LAFCO's task Monday. For example, Commissioner Matt Gourley, from Soledad, voted against the buyout because he said he is a strong proponent of the private sector.

"The government can't run anything efficiently," he said.

And Commissioner Kimbley Craig, from Salinas, argued about water supply issues in a manner that evoked a Salinas Valley vs. Monterey Peninsula perspective, referring to water in the valley as "our water." LAFCO has a seven-member board with only two regular board members from the Monterey Peninsula. Everyone else is from the Salinas Valley, based on the addresses of their offices. The final vote was 5-2 with the majority being mostly from the Salinas Valley.

Oglesby, who is mayor of Seaside, voted for granting the district latent powers. Commissioner Mary Ann Leffel, who represents the Monterey Regional Airport District and the only other Peninsula commissioner, sided with Cal Am, citing concerns about lost revenue for her district.

In addition to Oglesby, the Peninsula gained another vote on Monday from Commissioner Wendy Root Askew who is normally an alternate but on Monday sat in for Commissioner Luis Alejo who recused himself because of a conflict of interest.

District General Manager Dave Stoldt on Tuesday said he wasn't surprised by the vote.

"Even though we have been responsive and supplied a plethora of materials, I question how well it was read by commissioners," he said. "It's easier to kick the can down the road than to make a decision."

Stoldt said he is conferring with the water district's attorney and some board members about how to proceed with a lawsuit. He is calling for a special meeting of the board this week to

discuss legal action during a closed session. In court, a judge would consider the administrative record of LAFCO to ascertain whether it came to its decision based on fact. Stoldt said the court would find “no factual basis for the decision (LAFCO) made.”

Catherine Stedman, a spokeswoman for Cal Am, said on Tuesday that the LAFCO board evaluated the information provided by both sides and “fairly came to the right conclusion.” She cited the amount of money (\$2 million, she said) the district has spent in its pursuit of a takeover.

“Given that a condemnation of our system is clearly more complex, lengthy and expensive than any of the proponents anticipated, we hope (the water district) will reevaluate its stance on feasibility and elect to stop this effort now,” she said in an email. “Their chance of success is extremely limited and the costs they are foisting on the public continue to skyrocket. It’s in the best interest of the community for the district to abandon this effort and turn their attention to working collaboratively with Cal Am and other water agencies in the county to solve our regional water issues.”

Commissioner Chris Lopez, who represents the Salinas Valley on the Board of Supervisors, voted against the district and cited the impact it would have on the community of Chualar, which is in his supervisorial district. The water district would not be acquiring all of Cal Am’s assets, only its main system. There are small satellite systems Cal Am would continue to operate including one feeding Chualar.

Cal Am says its charges are based on a system-wide economy of scale — providing a greater volume of water with the same fixed assets. If it loses those assets, Cal Am said it would have to raise rates on customers of the smaller water systems, including Chualar.

But that won’t happen, Stoldt said. Since Chualar is a disadvantaged community, the California Public Utilities Commission ensures that its water rates can only rise in unison with the inflation rate. In short, Chualar is protected from Cal Am raising its rates to supplement the loss of its main system.

“There was a lot of parochial behavior protecting special interests instead of acting as a single body,” Stoldt said. “As the lawsuit moves forward, we will initiate ongoing discussions.”

From: Ron Weitzman <ronweitzman@redshift.com>
Sent: Friday, December 10, 2021 10:06 AM
To: waterplus@redshift.com
Subject: TWO WATER LETTERS IN TODAY'S HERALD

Your opinions

Fiscal sanity prevails with LAFCO's buyout vote

Thank you, LAFCO! Fiscal sanity prevailed Monday night and LAFCO (Local Agency Formation Commission) turned down the water board's application to expand into the retail water business.

We have heard over and over that the voters have spoken on Measure J. Through the LAFCO process we found out that satellite water systems not to be acquired would have their rates double or greater, and they did not get to vote on Measure J.

During the Measure J campaign no one told us that school districts would lose millions or dollars in funding if Cal Am were purchased, or that fire districts would lose millions as well. Many would never have voted yes had they known.

LAFCO's job is to ignore the hype of boosters and objectively review the water board's proposal. It is a countywide commission because that brings objectivity they saw through the hype and misinformation and did the courageous thing and stopped the out-of-control freight train. Kudos and thank you.

— *Rick Heuer, President, Monterey Peninsula Taxpayers Association*

Irresponsible decision by LAFCO on Cal Am buyout

Is Monterey County dysfunctional or what? It is hard to imagine a more irresponsible decision than the one the LAFCO board made on Monday by putting a boulder right in the middle of the road to freedom of the Monterey Peninsula from the costly clutches of Cal Am and the CPUC (California Public Utilities Commission). Commissioner Matt Gourley supported Cal Am because he believes the private sector can run anything more efficiently than the government. Cal Am does not run the water system independently, with efficiency created by competition, as a private business would; it runs it as a monopoly, with no competition, regulated by the CPUC, which is a government (like LAFCO, inefficient?) agency.

So, like the other LAFCO naysayers, his argument for rejection holds no water. The commission in fact was stupidly irresponsible to make the decision it did. That is because either decision, yea or nay, could lead to a lawsuit, but, while the water management district would pay LAFCO for defending a yea vote in court, LAFCO will have to pay its own costs for defending its nay vote if it loses, which it will.

The money to pay for that loss will come from county coffers and simply add to any loss of county revenue due to the municipalization of Cal Am.

— *Ron Weitzman, Carmel*

From: Ron Weitzman <ronweitzman@redshift.com>

Sent: Saturday, December 11, 2021 11:11 AM

To: waterplus@redshift.com

Cc: Alvin Edwards; Amy Anderson; Clyde Roberson; David Stoldt; George Riley; Karen Paull; 100-District 5 (831) 647-7755; Safwat Malek; 100-District 3 (831) 385-8333; 100-District 2 (831) 755-5022; 100-District 1 (831) 647-7991; 100-District 4 (831) 883-7570

Subject: Water Editorial by Sara Rubin in this Week's McWeekly

A rejection of next steps for a buyout of Cal Am is a failure of democracy.

[Sara Rubin](#)

Dec 9, 2021

In 2018, California American Water spent \$2.1 million urging Monterey Peninsula voters to reject Measure J, a public buyout initiative, yet the measure passed overwhelmingly, with 55.8 percent of the vote on Nov. 6.

What has followed in the three years since that election is a long slog of studies and analyses, commissioned by the Monterey Peninsula Water Management District, seeking to determine if it is feasible to pursue a public buyout, as the district is directed to do. The latest in that string of procedural steps was approval from an esoteric government agency, the Local Agency Formation Commission of Monterey County, which represents something of a third-party gatekeeper. Instead of a determination by the water district or its arch-nemesis Cal Am, this was an analysis from a neutral government agency. LAFCO staff spent months studying the question of whether it's feasible for the water district to publicly acquire Cal Am, and their answer was yes. Referring to a ream of documents 189 pages deep, LAFCO Executive Officer told commissioners on Dec. 6: "These items provide a body of evidence that acquisition is feasible."

There are, of course, unanswered questions in what would be the largest eminent domain case in California history if the buyout moves forward. Among the issues: a government property owner, rather than a private company, would mean \$1.3 million less in property tax revenue, affecting dozens of agencies.

Commissioner Pete Poitras, who represents special districts on LAFCO and is president of the Monterey County Regional Fire District board, was looking at an estimated loss of \$140,000 per year in revenue: "That represents a firefighter. We can't afford to lose a firefighter as a result of this," he said.

Commissioner Mary Ann Leffel, of the Monterey Peninsula Airport District, echoed that: "I do not believe I can in good faith take from one part of the community to make another part of the community happy."

Nobody ever said a public buyout of a private company that is not for sale would be seamless or without hidden expenses. But what voters said, loudly and clearly, is that they want the water district to pursue a buyout of Cal Am – if feasible. The loss of a firefighter at one agency, while a burden, does not impact the feasibility of a buyout of Cal Am.

Generalized opposition to the public sector was part of the guiding logic as LAFCO commissioners laid out their arguments for ignoring their own staff's determination.

"I'm definitely from the private sector, not the public sector. I don't think government can run anything efficiently," said Commissioner Matt Gourley, a former Gonzales City Council member, before making a motion to deny the water district's application. (Serious question: Why serve in government, then?)

LAFCO commissioners Chris Lopez (a county supervisor) and Kimbley Craig (mayor of Salinas) joined in the no bandwagon – too many uncertainties, they said.

Next up is the inevitable lawsuit. The day after the vote, MPWMD Chair Alvin Edwards told *Weekly* Staff Writer Christopher Neely the district will sue LAFCO over blocking them from fulfilling their obligations under Measure J.

Joining Commissioner Wendy Root Askew on the losing side of the 5-2 vote, Ian Oglesby (Seaside's mayor) said: "In my opinion, a judge or a jury would be very comfortable deciding in the district's favor that LAFCO's board disregarded the facts, as set out before us in our own draft study. I believe the only legally defensible position for me is to vote to approve."

It's always been presumed that it will be a judge who decides if it's really feasible. But that's supposed to be about substantive questions – whether the water district can operate the system at a reasonable cost. Instead, a court will now decide on this procedural step: Did LAFCO err in denying the water district's request to activate its "latent powers"?

If Oglesby is right, and if the LAFCO's staff analysis is right, the answer is an obvious yes.

Next, LAFCO staff will put their work in the shredder and write a new resolution in defense of the commission's no vote, so they have something to stand on in court. Whatever happens legally, LAFCO commissioners are ultimately accountable to voters – the same voters who approved Measure J.

SARA RUBIN is the *Weekly*'s editor. Reach her at sara@mcweekly.com



[Sara Rubin](#)

Sara Rubin loves long public meetings, red pens and reading (on newsprint). She has been editor of the Monterey County Weekly since 2016, and has been on staff since 2010.

From: Ron Weitzman <ronweitzman@redshift.com>
Sent: Sunday, December 12, 2021 3:28:10 PM
To: waterplus@redshift.com <waterplus@redshift.com>
Subject: Water Letter in Today's Herald

Your opinions

Demand LAFCO Accountability

Five out of the seven LAFCO commissioners' votes defied both logic and facts at their Dec. 6 regular meeting on agenda item 14, to not allow the Monterey Peninsula Water Management District to reactivate their latent powers to operate as a retail water purveyor. The majority of commissioners voted with their special interest groups in mind and disregarded their professional staff recommendation (who all should be highly commended), their consultant, Berkson and Associates (which did the third analysis study, all paid for by Cal Am ratepayers), and the 24,000 voters for Measure J (2018).

According to LAFCO's mission statement, "LAFCO is also charged with reviewing and approving ways to reorganize, simplify, and streamline governmental organizations." Apparently, these are just words without any meaning. Why doesn't LAFCO apply this mission to your own commission?

There's a lot of foot-draggings when it comes to Cal Am and new water projects that they do not own and can't take all of the profits. These are some of the reasons why we need public water! There are no profits, and thus the savings to ratepayers!

— *Troy Ishikawa, Carmel*

From: Ron Weitzman <ronweitzman@redshift.com>
Date: Wednesday, December 15, 2021 at 4:48 PM
To: "waterplus@redshift.com" <waterplus@redshift.com>
Subject: All Letters in Today's Herald Were Against LAFCO Decision

Your opinions

LAFCO vote goes against the will of the people

How is it possible that a nonelected board (LAFCO) can stop the will of the people expressed in an open, honest vote?

Has Trumpism hit the Monterey Peninsula? Hope not.

— *Dan Presser, Carmel*

LAFCO derelict in its duty to the local voters

Astoundingly, as noted in Monterey Herald's article on Dec. 8, the LAFCO (Local Agency Formation Commission) board voted to deny the Monterey Peninsula Water Management District's application to activate its legislatively approved latent powers. The shocking fact is the blatant disregard for voter-approved Measure J and violation of California Government Code (Cortese-Knox-Hertzberg Act) Section 56668 (n), which codifies the requirement that LAFCO must consider the interests of the voters who overwhelmingly approved Measure J, which is the mandate of the "voters or residents of the affected territory."

This LAFCO proposal cost the water district \$240,000. It included meticulous expert feasibility analyses. LAFCO's independent consultant confirmed buyout feasibility and LAFCO dedicated, competent staff repeatedly recommended approval.

These five no-vote commissioners only considered special interests and future electability, ignoring their job to respect voters' and affected residents' lawful interests. Their water supply issues fall outside LAFCO's jurisdictional charter.

This decision ensures LAFCO will assume future litigation costs, reducing county coffer funds and exacerbating the 1% or less tax loss special districts could incur, which the water district generously offered to compensate, thus fully offsetting any tax loss while providing the huge plus of cheaper water rates.

LAFCO is derelict in its duty to uphold the voter's constitutional rights.

— *Margaret-Anne Coppernoll, Marina*

LAFCO vote a disgrace to Peninsula residents

Your Monday vote is a disgrace to the already victims on the Monterey Peninsula of unbelievable years of ever-increasing costs of water provided by a corporation that seeks and always receives complete support from such state agencies as the California Public Utilities Commission and LAFCO. Your agency is supposed to be a county-wide agency that has adopted its policies and action by encouraging the orderly formation of local governmental agencies reserving agricultural land resources, discouraging urban sprawl, all in the delivery of encouraging the efficient local government. These policies and actions are important and should be followed on all issues before LAFCO's board. A proper and accurate result is extremely important, especially when a current and major issue regarding the acquisition of California American Water's main distribution systems by the county water district before the agency's board.

Last week, your majority on the board ignored the appropriate process of making decisions that result in appropriate, fair and helpful conclusions. Personal bias and politics should not be involved. Rather, making a decision should be based only on reviewing data and information provided by experienced persons, including your staff. Instead, recommendations from your staff and consideration of other information provided to you how LAFCO is supposed to be reviewing issues. They should be based on facts and consistent with the appropriate and best results for those affected.

I would expect you would have jumped to "preserving ag lands" that help those who live and work there. And you would do the same for "discouraging urban sprawl" of Salinas and other valley cities. But you obviously don't have the interest or concern to help the Peninsula citizens who receive their water from Cal Am. You clearly have ignored helping those who will suffer when you have voted against LAFCO's own policy and action to ensure the "delivery of encouraging efficient ... government service."

It's sad but easy to wonder how you got on the board in the first place, with no concern about representing all of the people in the grand county of Monterey.

— *William S. Hood Jr., Former and part-time Peninsula resident, former AMBAG executive director*

From: Ron Weitzman <ronweitzman@redshift.com>
Sent: Thursday, December 16, 2021 11:10 AM
To: waterplus@redshift.com
Subject: Two Water Letters in Today's Herald

All, re the second letter, what are we “local zealots” to do that is more appropriate than to vote? Use our second amendment rights to get our way? That’s what zealots do. Let us hope the court system works. –Ron

Your opinions

No logical reason for LAFCO to oppose buyout

What is going on with an entity like LAFCO (Local Agency Formation Commission), set up to review and make decisions on our never-ending Cal Am debacle, only to find that their decision was contrary to the interests of those 25,000-plus voters whose choice was to terminate this Cal Am interference in our progress to manage our own water!

I wouldn’t criticize, but in reading their own research/ findings, you will see they have not listed ANY logical reason that supports their ultimate decision, which is highly suspect if you ask me.

Perhaps further investigation will bear out the political or monetary ties that bind us to the second largest grift on our community. I would be interested to read the Monterey Herald’s investigation on exactly how this decision was reached.

— *Cate Mulligan, Seaside*

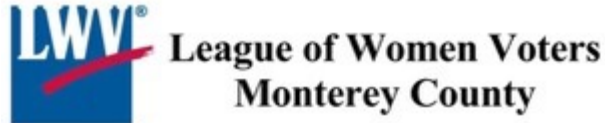
LAFCO board made the right decision with vote

The LAFCO board made the right decision in denying the Monterey Peninsula Water Management District’s application to activate its latent powers. Unfortunately, The Herald’s coverage of the hearing did not point out the multitude of reasons that were given by board members and Cal Am’s attorney for rejecting the proposal — including that it would be the largest debt issuance in Monterey County history and that the water district does not even have the reserves to cover its expected legal fees. In addition, the tax losses to local agencies that would result from a Cal Am takeover are significant — \$75 million over 20 years! The regional fire district testified they would lose one firefighter. Is that something our community can afford in current times?

Finally, Cal Am customers outside the district’s boundaries could see their rates double. Particularly for the disadvantaged community of Chualar, this is not fair. LAFCO’s role is to look at the impacts to the entire county, not to simply follow the will of Peninsula voters only. Their role is to be a checkpoint so that bad ideas by local zealots don’t get out of hand and go too far.

— *Carol Chorbajian, Monterey*

From: marianne.gawain <marianne.gawain@gmail.com>
Sent: Monday, December 20, 2021 6:53 AM
To: McKenna, Kate x5016
Cc: dstoldt@mpwmd.net
Subject: LAFCO and the MPWMD Application to Activate Latent Powers



LAFCO Commissioners and Staff
Kate McKenna, Executive Officer
Local Agency Formation Commission of Monterey County
132 West Gabilan Street, Suite 102
Salinas, CA 93901

December 20, 2021

Subject: LAFCO and the MPWMD Application to Activate Latent Powers

The League of Women Voters of Monterey County (LWVMC) supported the Ballot Initiative (Measure J) requiring the Monterey Peninsula Water Management District (MPWMD) to analyze the feasibility of purchasing California American Water Company (Cal Am) and to purchase it if it is found to be feasible. LWVMC support was based on our position that water is a necessary resource for human life and that it is a public resource, not a commodity.

The LWVMC studied ownership of water distribution systems in 2007. The study resulted in several criteria that an entity responsible for managing and distributing water should meet. Based on our evaluation of Cal Am's performance, we concluded that Cal Am has not satisfactorily met these criteria.

We believe that voter approval of Measure J tells you that the majority of the public affected by Measure J wants the process to move forward. We recognize, however, that several Commissioners raised questions at the December 5, 2021, meeting which should be answered factually prior to their casting a vote in January. These questions include: 1) the status of water rates for Chualar and other small systems; 2) the loss of tax revenue by a number of public agencies; 3) the loss of revenue equal to compensation for one firefighter by the Monterey County Regional Fire District.

Please direct staff to get specific answers to these questions and their possible solutions and discuss them further before taking your final vote.

As a side note, a simple Google search of 'lafco, ca, incorporation, voter approval' reveals much. There are numerous citations to LAFCOs that have required voter approval prior to considering incorporation. The pattern is clear--- reliance on voter approval as a standard measure of local application and support. The League believes that principle applies here.

Respectfully,

Marianne Gawain
President

CC: Monterey Peninsula Water Management District, Attn: Dave Stoldt

From: kathy west <tasker928@hotmail.com>
Sent: Tuesday, December 21, 2021 10:46 AM
To: McKenna, Kate x5016 <McKennaK@monterey.lafco.ca.gov>; Maluki, Safarina x5109 <MalukiS@monterey.lafco.ca.gov>
Subject: Re: stalling Cal Am buyout

Please distribute my letter below to your LAFCO members. I'd like to add a thank you to Wendy and Ian for voting and upholding the wishes of the county voters with Measure J where we voted for Cal Am take over to stop this incessant greed by Cal Am. We do NOT want a desal plant which will only increase our bills higher. We have the most costly water bills in the USA! What is wrong with you- why would you vote against this when the voters have clearly spoken? I wonder how many others of you have ulterior motives besides Luis Alejo who accepted campaign contributions from Cal Am's president and 2 law firms. You better believe we are fired up and won't stand for this. I want to get to the bottom of the reason each and every one of you have voted the way you did. The public deserves the truth. We will spread the word to each of your constituents before heading to the polls.

From: kathy west
Sent: Sunday, December 19, 2021 7:50 PM
To: district3@co.monterey.ca.us <district3@co.monterey.ca.us>; salinasmayor@ci.salinas.ca.us <salinasmayor@ci.salinas.ca.us>; mleffel@montereyairport.com <mleffel@montereyairport.com>
Subject: stalling Cal Am buyout

Dear LAFCO members

Disappointed you ignored the voters' wishes and have stalled the Cal Am buyout. We now need to spend more taxpayers funds to sue. I understand you are appointed to LAFCO, but you have been voted into your positions so we are looking forward to the next election so the public can once again use their vote to move this forward- which means we'll vote you out of office. I am sharing your names with my contact list of neighbors and will be posting to NextDoor closer to the election so it's fresh in everyone's minds as they head to the polls.

From: Soneff, George <GSoneff@manatt.com>
Sent: Tuesday, December 21, 2021 11:32 AM
To: McKenna, Kate x5016 <McKennaK@monterey.lafco.ca.gov>; McBain, Darren J. x5302 <McBainD@monterey.lafco.ca.gov>; Brinkmann, Jonathan x5121 <BrinkmannJ@monterey.lafco.ca.gov>
Cc: Donlon, Kelly L. x5313 <DonlonKL@co.monterey.ca.us>
Subject: Revised Draft LAFCO Resolution (Latent Powers).DOCX

Dear Kate, et. al.,

Attached for your consideration is a draft Resolution memorializing LAFCO's denial of MPWMD's latent powers application. As you can see, Section 3 of the draft summarizes some of the determinations that support and explain the denial.

This is not the first draft Resolution we have submitted to LAFCO concerning this matter. On November 23, in preparation for the December 6 hearing, we sent LAFCO a draft Resolution denying the proposal. That draft did not articulate any specific factual grounds for the denial, as LAFCO is not required to issue such statements. Specifically, LAFCO is not required to adopt factual findings concerning a proposed "change of organization" because its decision is quasi-legislative in nature. See, *City of Santa Cruz v. Local Agency Formation Com.*, 76 Cal.App.3d 381, 387 (1978): "Written findings of fact are customarily required in judicial proceedings, or those of a quasi-judicial administrative agency, for in such contexts the rights of persons are involved. However, no statute or authority known to us requires such findings in quasi-legislative determinations" (Id. at 389) Indeed, the "nature of the power exercised" by LAFCO is "legislative and political, not judicial." *Community Water Coalition v. Santa Cruz County Local Agency Formation Com.*, 200 Cal.App.4th 1317, 1328 (2011). Numerous cases affirm that a LAFCO quasi-legislative decision must be upheld unless it is arbitrary or capricious, entirely lacking in any evidentiary support, or fails to follow the process required by law. See, e.g., *San Joaquin Local Agency Formation Com. v. Superior Court* 162 Cal.App.4th 159, 167 (2008); *Western States Petroleum Assn. v. Superior Court* 9 Cal. 4th 559, 571 (1995).

Accordingly, while we continue to believe that the draft Resolution we delivered on November 23 would be both legally sufficient and appropriate, we offer the attached for your consideration in view of comments made at the December 6 which seemed to anticipate a Resolution that summarizes at least some of the issues that led to LAFCO's denial of the proposal.

If you have any questions or would like to discuss this further, we would be happy to do so.

Happy Holidays,
George Soneff

George Soneff
Partner

Manatt, Phelps & Phillips, LLP
2049 Century Park East
Suite 1700
Los Angeles, CA 90067
D (310) 312-4186 **F** (310) 996-6970
GSoneff@manatt.com

manatt.com

LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

RESOLUTION 21-xx

RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY DENYING THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT'S APPLICATION FOR ACTIVATION OF LATENT POWERS, (LAFCO FILE 21-01)

WHEREAS, the Monterey Peninsula Water Management District's ("District") application for proposed actions consisting of: (1) activation of latent powers to provide and maintain potable water production and distribution services for retail customers; and (2) sphere of influence amendment and annexation of approximately 138.74 acres outside current District boundaries, in the Yankee Point and Hidden Hills areas in unincorporated Monterey County, was heretofore filed and accepted for filing by the Executive Officer of this Local Agency Formation Commission; and

WHEREAS, this Resolution only pertains to the proposed activation of latent powers aspect of the District's application. The proposed sphere of influence amendment and annexation aspect of the District application is addressed in a concurrent resolution; and

WHEREAS, the Monterey Peninsula Water Management District ("District") Board of Directors initiated, and is in support of, the proposed activation of latent powers; and

WHEREAS, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (hereinafter the "Cortese-Knox-Hertzberg Act"), Government Code section 56021 includes activation of a latent power as a change of organization for which LAFCO approval must be sought before exercise of the latent power may occur; and

WHEREAS the District's application seeks LAFCO approval to activate the following latent powers: to provide and maintain potable water production and distribution services for retail customers throughout the District's territory; and

WHEREAS, a Certificate of Filing was issued for the application on July 30, 2021; and

WHEREAS, the Executive Officer, pursuant to Government Code section 56658, initially set October 25, 2021 as the hearing date on this proposal and provided public notice as required by law; and

WHEREAS, at the public hearing held by this Commission on October 25, 2021, the Commission voted to continue the hearing date to December 6, 2021, to consider additional information regarding the District's proposal; and

WHEREAS, the Executive Officer, pursuant to Government Code section 56658, set December 6, 2021 as the hearing date on this proposal and provided public notice as required by law; and

WHEREAS, the public hearing by this Commission was held upon the date and at the time specified in said notice of hearing; and

WHEREAS, the Executive Officer, pursuant to Government Code section 56665, has reviewed this proposal and prepared a report, including recommendations thereon, and has furnished a copy of this report to each person entitled to a copy; and

WHEREAS, this Commission, on December 6, 2021 heard from interested parties and considered the proposal and the report of the Executive Officer, and considered the factors determined by the Commission to be relevant to this proposal, including, but not limited to, factors specified in Government Code sections 56668, 56824.12, and 56824.14; and

WHEREAS, in October 2020, the District, as the Lead Agency, certified, pursuant to the California Environmental Quality Act (“CEQA”), an Environmental Impact Report (“EIR”) for this proposal for “Potential Acquisition of Monterey Water System and District Boundary Adjustment.”

NOW, THEREFORE, the Local Agency Formation Commission of Monterey County does HEREBY RESOLVE, DETERMINE, AND ORDER as follows:

Section 1. The foregoing recitals are true and correct.

Section 2. Acting as a Responsible Agency regarding the District’s proposed activation of latent powers, the Commission certifies that it and its staff have independently reviewed and considered the EIR prepared and certified by the District’s Board of Directors for this proposal pursuant to CEQA, and finds the EIR to be adequate.

Section 3. The Commission has considered the District’s proposal (including its plan for services prepared pursuant to Government Code section 566653), the oral presentations and written communications received prior to the close of the public meeting, as well as the factors set forth for changes of organization in Government Code section 56668, and the requirements of Government Code section 56824.10, *et. seq.* At its December 6, 2021 meeting, Commissioners deliberated and expressed concerns about various aspects of the District’s proposal, including the loss of property tax revenues to the County and various agencies, the potential that residents outside the District’s boundaries could face higher costs for water and wastewater service, and the level of public debt that the District proposes to assume to acquire Cal-Am’s assets. Following such deliberations, the Commission denied (by a vote of 5 to 2) the District’s proposal for activation of latent powers to provide and maintain potable water production and distribution services for retail customers throughout its territory. The Commission determines the proposal to be inconsistent with one or more of the requirements and factors set forth in the relevant provisions of the Government Code for approval of the change of organization and exercise of latent powers as proposed by the District, and hereby terminates the proceedings in connection with the District’s proposed activation of latent powers. Among other things, the Commission’s determination is based upon evidence demonstrating that:

A. California-American Water Company (Cal-Am) has provided retail water service to the Monterey Peninsula for more than 50 years. The District proposes to replace Cal-Am as the retail water service provider within the District’s territory, and asserts that it can thereafter reduce water rates in the future below the rates that would otherwise be charged by Cal-Am. Cal-Am is among the largest payors of property taxes in the County of Monterey. As a public entity, the District would not pay property taxes to the County. The District’s projection of reduced future water rates is in part based upon the avoidance of property taxes that would otherwise be paid by Cal-Am in future years. The District’s financial analysis submitted with its Application to LAFCO showed that as a consequence of replacing Cal-Am, over a 20 year period (fiscal year 2021 to 2040) there would be a reduction in property tax revenue to the County of Monterey and various public agencies of more than \$75 million. (Raftelis Preliminary Valuation and Cost of Service Analysis Report, October 29, 2019, Ex. 17, Row 9.) This reduction in property taxes revenues would result in reduced funding to the County, as well as number of public entities, including several school districts, the Monterey County Regional Fire District, and several cities. The twenty entities that would incur the most significant impacts are as follows.

20 County Entities That Will Lose The Most In Property Tax Revenues	Property Tax Loss – 20 Years (Pre-ERAF)
1. Monterey County-Wide	\$18,713,395
2. Carmel Unified Sch Dist	\$10,675,193
3. Monterey Pen Unified Sch Dist	\$6,609,277
4. Monterey County Regional Fire District	\$4,960,121
5. Pacific Grove Unified Sch Dist	\$4,494,356
6. Monterey Pen College	\$3,639,711.
7. Monterey County Office of Education	\$2,090,098
8. Pebble Beach Community Services District	\$1,977,946
9. City of Monterey	\$1,711,275
10. County Library	\$1,446,502
11. City of Seaside	\$1,177,611
12. Monterey Peninsula Regional Park District	\$892,080
13. City of Pacific Grove	\$675,023
14. Monterey Peninsula Water Management District	\$672,179
15. City of Carmel	\$296,056
16. Cypress Fire Protection District	\$275,332

17. Washington Union Sch Dist	\$230,316.
18. Salinas Union High Sch Dist	\$220,278
19. Carmel Highlands Fire Protection	\$182,402
20. Carmel Area Wastewater District	\$142,099

- B. Cal-Am's Central Division includes nine water systems and eight wastewater systems in Monterey County. The acquisition proposed by the District, however, does not include all of these systems. Specifically, the District is not proposing to acquire five water systems that are operated by Cal-Am as part of its Central Division. (Amended Application, p. 5) These five water systems are: Toro, Ambler, Garrapata, Chualar, and Ralph Lane. In addition, the District is not proposing to acquire the eight wastewater systems Cal-Am operates as part of its Central Division: Carmel Valley Ranch, Indian Springs, Las Palmas, Oak Hills, Pasadera, Spreckels, Village Green, and White Oaks. The five water systems and eight wastewater systems that the District is not proposing to acquire (collectively the "Remaining Systems") are presently operated as part of an integrated system within Cal-Am's Central Division. Severing the Remaining Systems from the Central Division and leaving it to Cal-Am to operate them separately can be expected to cause operating inefficiencies and loss of economies of scale that will result in higher future costs for customers of the Remaining Systems. It is noteworthy that Chualar is a "disadvantaged community" pursuant to Water Code §79505.5.
- C. To obtain ownership of Cal-Am's water system assets, the District proposes to prosecute an eminent domain lawsuit against Cal-Am in the Monterey Superior Court. That litigation will require two trials: (1) a "right to take trial" in which a judge decides whether to allow the District to condemn the water system; and (2) if the taking is allowed, a "valuation trial" in which a jury will decide the amount the District must pay Cal-Am. Based on information submitted to date by the District and Cal-Am, the valuation verdict—if the case gets that far—would be a minimum of \$513 million and a maximum of \$1.04 billion. This would appear to be the highest dollar value eminent domain litigation in the State's history. The District faces considerable financial exposure if its eminent domain action is rejected in the "right to take" trial or if the case is abandoned as a result of a valuation decision that sets a price exceeding the amount the District can afford to pay; in either of these circumstances, the District would be required to bear both its own litigation expenses and to reimburse Cal-Am for its litigation expenses. The District has estimated that its financial exposure for these expenses may be as high as \$20 million. After review of the results from other failed efforts to condemn utility assets, LAFCO's independent consultant observed that the District's financial exposure from a failure in its planned eminent domain lawsuit "could total \$25 million to \$34 million or more." (LAFCO Agenda Package [Item 9], Oct. 25, 2021, p. 15) Because the District does not have financial reserves sufficient to cover this level of financial exposure, it poses a risk to the District's future operations and the District's ability to obtain funding for other future projects that are necessary assure an adequate water supply for the Monterey Peninsula.
- D. The District proposes to operate the Monterey Water System (MWS) in the same manner that Cal-Am has done. (See, e.g., Final Environmental Impact Report for Potential Acquisition of

Monterey Water System and District Boundary Adjustment, October 2020, pp. 1-2, 2-15, et. seq.) No changes or expansion to the MWS infrastructure, associated water rights or sources, future capital investments, or daily operations are proposed. Currently, the District lacks the qualified staff, facilities, and equipment to operate the MWS. It intends to take all facilities and equipment needed from Cal-Am in the planned eminent domain action. To operate the MWS, the District plans to hire Cal-Am's current workforce, approximately 87 employees. Currently, the District's total workforce numbers approximately 27 employees. The District proposes that if it is unable to hire a sufficient number of Cal-Am employees to operate the MWS, it will outsource operation of the MWS to a third-party contractor. The ability to deliver safe and reliable water service is paramount. A proposal to duplicate the current level of operations and service—while lacking the present capability to do so—poses a risk to the future ability to provide safe and reliable water service.

Section 4. If any provision of this resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this resolution that can be given effect without the invalid provision or application, and to this end the provisions of this resolution are severable.

Section 5. The Executive Officer is hereby authorized and directed to mail certified copies of this resolution in the manner and as provided in Section 56882 of the Government Code.

UPON MOTION OF Commissioner _____, seconded by Commissioner _____, the foregoing resolution is adopted this ___ day of January 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chris Lopez, Chair
Local Agency Formation Commission of Monterey County

ATTEST: I certify that the within instrument is a true and complete copy of the original resolution of said Commission on file within this office.

Witness my hand this _____ day of _____, 2022

By: _____
Kate McKenna, AICP
Executive Officer

400848460.4

Draft from Cal-Am

From: Ron Weitzman <ronweitzman@redshift.com>
Sent: Tuesday, December 21, 2021 4:36 PM
To: waterplus@redshift.com
Subject: Water Letter in Today's Herald

Your opinions

LAFCO stood up against special interests in vote

It's not often in today's world that you see politicians have the strength to go against pressure from special interest groups and do what's right, but that's exactly what happened at the December LAFCO board hearing, where its members stood up for fiscal responsibility and said no to the Monterey Peninsula Water Management District's ill-advised proposal to try and takeover California American Water by eminent domain.

The Cal Am attorney asked the question, who pays? Had the district been allowed to proceed it would be risking \$30-\$40 million in legal fees and by its own estimate, \$700 million in debt to buy Cal Am's system.

These are all costs the public pays. Local government agencies losing tax revenues from Cal Am would pay too — that includes millions to local school districts, fire protection and Monterey County itself. LAFCO voted to protect the public's dollar. I'm grateful. I'm sure they will be attacked by members of Public Water Now, but they deserve to be applauded.

— *Doreen Cursio, Monterey*