

LOCAL AGENCY FORMATION COMMISSION
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Kate McKenna, AICP
Executive Officer

MEMORANDUM

DATE: February 28, 2022

TO: Chair and Members of the Formation Commission

FROM: Kate McKenna, Executive Officer, AICP 

SUBJECT: Supplemental Memorandum #2 Transmitting Correspondence regarding February 28, 2022 LAFCO Meeting Agenda Item No. 10 – Monterey Peninsula Water Management District – Reconsideration of Resolution #22-01 disapproving the District’s proposed activation of latent powers to provide and maintain potable water production and distribution services for retail customers.

Since distributing the agenda packet for the February 28 LAFCO meeting and Supplemental Memo #1 on Friday, February 25, we have received additional correspondence. Those letters and emails are attached to this memorandum.

Attachment: Correspondence received after 12:00 p.m. February 25 to noon February 28, 2022 regarding Agenda Item No. 10 on the February 28, 2022 Regular LAFCO Meeting Agenda.

From: wallace notley <wwnotley@gmail.com>
Sent: Friday, February 25, 2022 12:18:23 PM
To: McKenna, Kate x5016 <McKennaK@monterey.lafco.ca.gov>
Subject: LAFCO February 28, 2022 meeting

Executive Director Kate McKenna

Sorry, I may be too late to include in your correspondence to the Commissioners, but hope you can at least pass along my concerns about the recent LAFCO decisions to deny our Water District the latent powers necessary to proceed with our buyout. This is a very difficult political climate to live in today. Cal Am has faced great opposition from local Cal Am ratepayers and so has given local businesses favored rates over the rest of the ratepayers who wind up paying the shortfall. As a result, representatives from the local businesses have insinuated themselves into local decision making governing bodies who have become Cal Am shells. Many have received extensive campaign contributions from Cal Am and have focused so much on their own campaigns or business interests that they have abdicated their duty as LAFCO Commissioners. There really is no rational reason why they should vote against the Monterey Peninsula Water Management District's request for reconsideration this coming Monday. The Water District has made admirable efforts and assurances that the satellite systems will not be impacted and that the CPUC has made rules that disadvantaged communities' water rates cannot be raised any more than the current CPI. In closing, there could be additional special interests behind the scenes that are also pressuring the commission to deny the latent powers such as the agricultural industry. If we are to solve this pressing issue, we must address it as a whole county with the spirit that we are all in this together and the water, climate, and environment issues are world wide.

Thank You and Staff for your diligence in this struggle.

Walt Notley

Monterey Peninsula Cal Am Ratepayer

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February 25, 2022

Via Electronic Mail Only

Commissioners
Local Area Formation Commission of
Monterey County
132 W. Gabilan St., Suite 102
Salinas, CA 93901

c/o Kate McKenna, Executive Officer
mckennak@monterey.lafco.ca.gov

Re: Request for Recusal; Supplemental Letter in Support of
Reconsideration of Resolution No. 2022-01

Dear Commissioners:

This firm represents the Monterey Peninsula Water Management District (“District”) in connection with the District’s proposal to expand its retail water services (“Proposal”). We are writing to request that LAFCO approve the application for reconsideration and that Commissioners Leffel, Gourley, and Poitras recuse themselves from participating in further hearings on the District’s application. We have significant concerns about the District’s ability to receive a fair and unbiased hearing in light of the evidence that Commissioners Leffel, Gourley, and Poitras are unable to exercise independent judgment on behalf of the public as a whole.

In addition, we write to underscore several serious flaws in the Commission’s decision. As the District has previously explained, California American Water (“Cal-Am”) improperly expanded the scope of this proceeding far beyond the relevant facts or statutory considerations. *See, e.g.*, Letter from David Stoldt to Kate McKenna (April 21, 2021). If the Commission focuses on its core statutory duty—evaluating whether the

District will have the ability to carry out its proposed services—it will inevitably find that the record mandates approval of the District’s application.

I. Commissioners Leffel, Gourley, and Poitras Should Recuse Themselves from Further Participation in the Proceeding.

LAFCO Commissioners must exercise “independent judgment on behalf of . . . the public as a whole.” Gov. Code § 56331.4. That requirement echoes the basic right of parties to receive a “neutral and unbiased” hearing. *Woody’s Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1021. An unbiased decisionmaker is one who “has *no conflict of interest*, has *not prejudged* the specific facts of the case, and is *free of prejudice* against or in favor of any party.” *Petrovich Dev. Co., LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963, 973 (emphasis in original). The participation of even a single biased decisionmaker renders a decision invalid. *See Woody’s Group*, 233 Cal.App.4th at 1022; *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 485.

In this case, Commissioners Leffel, Gourley, and Poitras have demonstrated impermissible bias and an inability to meet the statutory standard for independent judgment. Commissioner Leffel has long advocated against the District’s proposal to expand its retail water service. In 2018, Commissioner Leffel co-authored the official argument *against* Measure J. *See* Exhibit 1 at 3. Prior advocacy against a project is a hallmark of decisionmaker bias. *See Woody’s Group*, 233 Cal.App.4th at 1022; *Nasha*, 125 Cal.App.4th at 477. In addition, it is plainly improper for a leading advocate against a ballot measure to later exercise administrative power in an attempt to block the measure from moving forward. Commissioner Leffel’s continued participation in this proceeding will only undermine the validity of the Commission’s ultimate decision on this application.

Commissioner Gourley, who introduced the motion to deny staff’s recommended approval of the District’s application, openly expressed animus against public entities provide public services. *See* Partial Transcription of LAFCO Commission Meeting, Dec. 6, 2021 at 10-11 (“Dec. 6 Hearing Transcript”) (“And, no, I’m definitely from a private sector, not the public sector. I don’t think the government can run anything efficiently, and I think we’ve seen that.”). Commissioner Gourley’s reasons for denying the proposal are unmoored from the record and conflict with the Commission’s recent determination in its municipal service review that the District is well run. Commissioner Gourley lacks the ability to serve as a neutral reviewer of the District’s proposal.

Finally, at the December 6 hearing, Commissioner Poitras demonstrated bias on behalf of the Monterey County Regional Fire District (“Fire District”) and against the

proposal. *See* Dec. 6 Hearing Transcript at 5 (“The district I represent, personally, is Monterey County Regional Fire District. They are slated to lose \$140,000 per year if this goes through. That is a considerable concern to me.”). Commissioner Poitras’ comments further indicate that he coordinated with the Fire District to advance that district’s unique interests. *Id.* at 5-6 (“[I]t is true that the Water Management District *sent us a letter*, which arrived around 11:00 a.m. on Friday . . . and we’ve just now, and today, gotten it to *our attorneys.*”) (emphasis added). The Commission cannot serve as a neutral and independent body when its members are openly partisan on behalf of select interests in the proceeding, in violation of their statutory duty to represent the public as a whole.

In light of the alarming evidence of bias, Commissioners Leffel, Gourley, and Poitras should recuse themselves before the Commission decides the District’s application for reconsideration.

II. The Commission Erred by Applying Irrelevant Factors from Government Code Section 56668.

As the District noted in its January 31, 2022 letter, and as discussed further below, the Commission’s decision relies upon an array of factors that are improper and irrelevant, including speculation about sources of water supply and property tax losses that were properly addressed through the staff-proposed conditions of approval.

Indeed, the Commission’s decision misapplies the statutory criteria relevant to a latent powers applications. Article 1.5 of the Cortese-Knox-Hertzberg Act contains the substantive standards for a latent powers application, including whether a special district will have sufficient revenues to carry out the services. Gov. Code § 56824.14. By contrast, section 56668 contains a much broader array of factors, many of which are plainly inapplicable to a latent powers proposal. For example, factor (l) (timely availability of water supplies) references statutory provisions involving land use changes that are irrelevant for latent powers applications. Similarly, factor (f) references the impacts of proposed boundary changes, and activation of a latent power does not change a district’s boundaries.

In 2008, the Legislature amended the Cortese-Knox-Hertzberg Act to include the exercise of latent powers within the definition of a “change of organization.” A.B. 2484, 2007-2008 Reg. Session. However, the legislative history of that amendment shows that the Legislature did not intend to subject latent powers applications to the broad and ill-fitting section 56668 factors. Instead, a Senate Committee Bill Analysis described the purpose of that change as imposing “fiscal discipline” and applying the “same protest

rules” to latent powers applications that apply to annexation decisions. Cal. Bill Analysis, Sen. Local Gov. Comm., 2007-2008 Reg. Session, June 4, 2008.

Thus, the Commission erred when it applied irrelevant factors from section 56668 to deny the District’s application. The Commission must reevaluate the District’s proposal in light of the substantive criteria that apply to latent powers applications. *See* Gov. Code § 56824.14.

III. The Commission Misapplied the Key Statutory Criterion Regarding Revenue Sufficiency.

When evaluating a latent powers application, LAFCO’s principal task is to determine whether the applicant district will have “sufficient revenues to carry out the proposed new or different functions or class of services.” Gov. Code § 56824.14. The Commission’s decision misapplies this key statutory factor.

The Raftelis report and the Berkson Associates report convincingly show that the District’s cost of providing retail water service will be less than Cal-Am’s. Nonetheless, even if there is some slight chance that the District’s operating costs will be comparable to or higher than Cal-Am’s, that does not answer the statutory question of whether the District will have sufficient revenues to cover those costs.

To answer that question, the Commission must consider the District’s revenue sources, which it failed to do. *See* Gov. Code § 56824.14. As Commission staff has recognized, the District’s powers include the ability to borrow funds and raise revenue through water charges and rates. The January 5 resolution entirely omits any discussion of the District’s revenue sources. By contrast, staff’s previously-proposed resolution concluded that the District’s “broad financial powers” give it sufficient revenue to implement the proposal in the unlikely event that its costs exceed the likely projections in the Raftelis report and the Berkson Associates report. Revenue sufficiency is the critical statutory factor under the Cortese-Knox-Hertzberg Act, and the Commission’s failure to consider the District’s broad sources of revenue is a significant flaw.

IV. The Decision Conflicts with the District’s Certified EIR for Acquiring the Cal-Am System, in Violation of CEQA.

On October 29, 2020, the District certified an Environmental Impact Report (EIR) for the proposed acquisition and operation of Cal-Am’s system. The EIR was the culmination of an extensive process of reviewing the potential environmental impacts of that project. The EIR concluded that the project would not result in significant impacts on

water supply. *See* EIR § 4.6-11 (“[P]otential impacts associated with water supply availability would be less than significant.”); § 4.3-14 (“Impacts of the proposed project on groundwater supplies and recharge would be less than significant.”); § 4.3-16 (The project’s “contribution to cumulative impacts in relation to groundwater supplies would not be considerable.”). And the EIR did not identify any negative impacts to environmental justice.

Under CEQA, the District is the lead agency for determining the extent of potential environmental impacts from its project. *See* Pub. Resources Code § 21067; EIR § 1-1. Monterey County LAFCO is a responsible agency for that project. *See* Pub. Resources Code § 21069. Under CEQA, a responsible agency’s role is tightly circumscribed. Responsible agencies can comment on perceived inadequacies in an EIR, but must do so through the CEQA process. After the lead agency has certified an EIR, a responsible agency is not allowed to conduct its own *de novo* review of the environmental impacts of the project and reach contrary conclusions. *See City of Redding v. Shasta County Local Agency Formation Comm’n* (1989) 209 Cal.App.3d 1169, 1180 (LAFCO prohibited from rejecting lead agency’s CEQA determination). Indeed, responsible agencies must “use the EIR prepared by the lead agency, even if they believe it to be inadequate.” *Central Delta Water Agency v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 245, 274. Even when an EIR is challenged in court, CEQA instructs that responsible agencies “shall assume that the environmental impact report” is valid. Pub. Resources Code § 21167.3(a).

Here, the Commission has improperly second-guessed the District’s conclusions regarding the environmental impacts of the project. The January 5 resolution rejects the EIR by asserting that the project will negatively impact the region’s water supply and harm the Salinas Valley groundwater basin. The EIR concluded otherwise. *See* EIR §§ 4.3, 4.6. In addition, LAFCO has asserted that the project will negatively affect environmental justice. The EIR, however, did not identify any environmental justice impacts from the project, and LAFCO cannot now claim that there are deficiencies in the EIR outside of the CEQA process. To the contrary, a core purpose of CEQA is to consolidate the environmental review of a proposed project in a single forum. *Redding*, 209 Cal.App.3d at 1181.

Furthermore, the Commission itself failed to identify any environmental justice impacts as that term is defined in the Cortese-Knox-Hertzberg Act. The act defines environmental justice as ensuring a “healthy environment for all people such that the *effects of pollution* are not disproportionately borne by any particular populations or communities.” Gov. Code § 56668(p) (emphasis added). The Commission has not cited any pollution effects that would be disproportionately borne by disadvantaged

populations. Indeed, the EIR concluded that there would be no significant pollution effects of any kind from the proposed project, let alone disproportionate effects on disadvantaged communities.

Notably, the Commission previously reviewed and commented on the District's draft EIR. *See* EIR § 8-20. The Commission provided suggestions on the draft EIR's discussion of discretionary approvals, but otherwise had "no additional comments." *Id.* If the Commission believed that the EIR failed to identify environmental impacts from the project, or that any of its conclusions were incorrect, the proper forum for raising those issues was during the CEQA process. The Commission lacks the authority to undermine the EIR and the CEQA process now by making its own contrary conclusions on environmental impacts.

V. Conclusion

The District requests that Commissioners Leffel, Gourley, and Poitras recuse themselves from further participation in these proceedings. In addition, the District urges the Commission to limit its review to the appropriate statutory factors. Those factors and the evidence before the Commission compel approval of the District's application.

Sincerely,

SHUTE, MIHALY & WEINBERGER LLP



Edward T. Schexnayder

Exhibit 1



Local ballot measure: J

Impartial analysis of Measure J

This Initiative would add Rule 19.8, to the Monterey Peninsula Water Management District Rules and Regulations, to ensure public ownership of all water delivery systems in the District, by acquiring such systems through negotiation or eminent domain, all assets of California American Water (Cal Am) serving the District. The purposes stated in the Initiative include to "ensure the long-term sustainability, adequacy, reliability, cost-effectiveness and quality of water service."

Adding this rule would make it District policy to pursue public ownership of water production, storage and delivery systems within the District boundaries. To implement the policy, the District shall, within 9 months, complete a written plan addressing acquisition, ownership, and management of all water facilities and services within and outside the District. While the "Policy" and Rule to be adopted require the acquisition of the water system to be "feasible," this Policy/Rule does not mandate implementation of the purposes stated in the Initiative, such as "long-term sustainability, adequacy, reliability, cost-effectiveness and quality of water service." Presumably, the mandated Plan will address these critical purposes of the Initiative and to effectuate the Initiative's purpose acquisition should occur only if the plan shows it would result in reliability, quality service, cost-effectiveness and is financially feasible.

This measure was placed on the ballot after a citizen sponsored Initiative Petition entitled, "Monterey Peninsula Water System Local Ownership and Cost Saving Initiative," was circulated and obtained the requisite number of verified signatures. Pursuant to Elections Code Section 9310, the governing body of the Monterey Peninsula Water District ordered that the measure be submitted to the voters.

A "Yes" vote is a vote to approve mandating that the Monterey Peninsula Water Management District establish public ownership of the water system, currently owned and operated by Cal Am, through negotiation or eminent domain, and thereafter control the assets and manage the system.

A "No" vote is a vote against public ownership and control by the Monterey Peninsula Water Management District of Cal Am's Monterey system. A "No" vote would allow Cal Am to continue as the owner and manager of the Monterey Peninsula Water System.

This measure requires a majority of voter approval within the District.

Dated: August 8, 2018

/s/ CHARLES J. MCKEE

Monterey County Counsel



Local ballot measure: J

Arguments and rebuttals are the opinions of the authors. We print them exactly as submitted.

Argument in favor of Measure J

Vote YES for more affordable water.
Vote YES for local control.
Vote YES to get the facts on public ownership.

Public Water Now volunteers put Measure J on the ballot with signatures of 11,557 fellow voters who are fed up with their skyrocketing water bills under California American's monopoly ownership.

Public ownership is our only way to lower water costs. 87% of the people in the U.S. get their water from public agencies for good reason.

A YES vote requires the Monterey Peninsula Water Management District to do a feasibility study. If it's financially feasible and in the public interest to buy Cal Am's system, negotiations would proceed for the District to become the new public owner.

The Monterey Peninsula has the most expensive water in the country according to a comprehensive study of the 500 largest water companies in the U.S. conducted by Food & Water Watch in 2015/2017*. That's outrageous and unacceptable!

Private water companies like Cal Am are profit driven and intend to provide the highest return to their shareholders. They are not accountable to us. Public agencies are non-profit and we can hold them accountable.

Cal Am can't be trusted. It promoted water conservation, then charged us \$64,000,000 to recover lost revenue for water we saved. Cal Am initiated three new water supply projects since 1995, failed all three times, then sent us the bill totaling \$34,000,000. Cal Am mismanaged our watershed, over-drafting the Carmel River and the Seaside Groundwater Basin. Now it's threatening Marina's water supply with its slant wells.

Every resident, business and worker is affected by the high cost of water, even if they don't pay a Cal Am bill directly.

YES on J is the only way for the public to get all the facts.

* Study available at publicwaternow.org/most_expensive_water

/s/ Dennis Mar, President, League of Women Voters of Monterey County
/s/ Clyde W. Roberson, Mayor of Monterey
/s/ Karin Strasser Kauffman, Former Monterey County Supervisor
/s/ Richard Stillwell, Business Owner
/s/ David R. Pacheco, City of Seaside City Council

Rebuttal to argument in favor of Measure J

These same backers who tried to pull the wool over our eyes in 2014 are at it again.

Water on the Monterey Peninsula is costly because the state mandated cutbacks on drawing water from our primary source – the Carmel River – and ordered rate structures that encourage conservation – so large users pay more.

During the drought, water usage dropped, but the cost of running the water system – maintaining the pipes, water storage tanks, pumping facilities and personnel – didn't go down.

So, dozens of publicly-owned water systems across the state are raising rates.

Cal Am owns the pipes, storage tanks, pumps – everything that brings water to homes and businesses across the Monterey Peninsula.

We've studied these issues carefully – and simply put – there's no way buying over \$700 million worth of hard assets – including the desal plant beginning construction this fall – will reduce our water costs.

That buyout bill alone will come to \$1,100 per year per customer for the next 30 to 50 years – over and above your water bill.

Don't be fooled. This isn't a fact-finding mission. Measure J allows the Monterey Peninsula Water Management District to seize Cal Am's assets by eminent domain and force every water user to pay for it – without going back to voters for permission.

Every attempted takeover of a private water company in California in the last 20 years has cost ratepayers more money in higher water rates, legal bills and buyout costs. Monterey Peninsula won't be any different.

Don't fall for pie-in-the-sky promises.

Vote No on Measure J.

www.NoMeasureJ.com

/s/ Carlos Ramos, Jr., Chair, Latino Water Coalition

/s/ Jody Hansen, President & CEO, Monterey Peninsula Chamber of Commerce

/s/ Ron Cheshire, Former Director, Monterey Peninsula Water Management District

/s/ Paul B. Bruno, Director, Seaside Groundwater Basin Watermaster

/s/ Moe Ammar, President, Pacific Grove Chamber of Commerce



Local ballot measure: J

Arguments and rebuttals are the opinions of the authors. We print them exactly as submitted.

Argument against Measure J

We share your frustration with Monterey Peninsula water rates. Kicking out Cal Am may sound appealing – until you examine the facts.

Remember, it's not water itself that costs money – it's the cost of delivering that water to your house.

Water has to be pumped, purified, stored, and delivered through miles of pipes, pumps, water testing facilities and storage tanks. Cal Am has invested many millions of dollars to build and maintain this water system.

If we pass Measure J in 2018, the history of similar takeover attempts shows it'll be 5 to 7 years of legal battles before the Monterey Peninsula Water Management District (MPWMD) could seize the system from Cal Am by eminent domain.

By then, Cal Am will have completed the desal plant that will solve our chronic water shortages.

By then, the cost of buying out Cal Am's property will have soared to approximately \$700 million or more. That's \$1,100 a year on every customer's water bills or property taxes – for the next 30 to 50 years. Depending on how it's financed, that's \$35,000 to \$55,000 per household.

That's on top of the rates you're currently paying. And promises of lower rates have no basis in fact, because no government takeover of a water system in California has resulted in lower costs to customers in the last 20 years.

In the Santa Cruz County community of Felton, the government takeover campaign claimed buying the system wouldn't cost more than \$2 million. After years of litigation, it actually cost \$13.4 million – plus \$2 million in administrative and legal fees. Every household is now paying over \$16,000 in bond payments. Plus water rates themselves have gone up 96% since the government takeover.

We're progressives and conservatives. We're liberal Democrats and anti-tax Republicans. But we're united in opposing Measure J.

Stop the Costly Water Boondoggle
VOTE NO on Measure J.

www.StoptheCostlyWaterBoondoggle.com

/s/ Mary Ann Leffel, Co-Founder, Monterey County Business Council

/s/ Brian LeNeve, Conservation Chair, Carmel River Steelhead Association

/s/ John V. Narigi, Chairman, Coalition of Peninsula Businesses

/s/ Rick Heuer, President, Monterey Peninsula Taxpayers Association

/s/ Sue McCloud, Former Mayor of Carmel-by-the-Sea

Rebuttal to argument against Measure J

Vote YES on J to get the facts that Cal Am doesn't want you to know.

There's no risk in exploring public ownership.

Measure J will determine if it's financially feasible and in the public interest to buy Cal Am.

Despite claims of investing in our future, Cal Am is actually investing in "their" future with "our" money. According to Cal Am's financial reporting they took \$19 million in profit and taxes out of our community in 2016.

Public ownership eliminates profit, thereby lowering water costs.

Cal Am charged us \$34 million for three failed water projects. They over-pumped our local water supplies. They charged us \$64 million for water we didn't even use. Should we trust Cal Am to deliver a cost-effective desal plant? Our skyrocketing bills suggest otherwise!

For over 20 years Cal Am's solution to our water shortage has been "on the horizon," but never delivered.

The facts of Felton's successful buyout of Cal Am differ greatly from Cal Am's version. Felton expected to pay from \$10 to \$12 million. Initially Cal Am claimed they were worth \$46 million. The final purchase price was \$13 million.

In the past 10 years, Felton's water cost under public ownership has increased 39%, while our cost under Cal Am has increased 170%.

No matter what Cal Am claims they are worth, in an eminent domain procedure the court will determine their value.

Is community-owned water or corporate-owned water the best choice for our future?

Vote Yes on J to find out.

PublicWaterNow.org

/s/ George Riley, Managing Director, Public Water Now

/s/ Marc Del Piero, Water Rights Attorney

/s/ Pris Walton, President, Carmel Valley Association

/s/ Alvin Edwards, Retired Fire Captain

/s/ Alan Haffa, Professor, Monterey City Council

February 25, 2022

LAFCO of Monterey County
Executive Officer, Kate McKenna
Chair Lopez, Commissioners, and Staff
Via email:

Dear Chair Lopez, Commissioners, and Staff,

SUBJECT: SUPPLEMENTAL WRITTEN COMMENTS TO COPPERNOLL WRITTEN
COMMENTS OF FEB 3, 2022 FOR MONTEREY PENINSULA MANAGEMENT DISTRICT
APPLICATION FOR RECONSIDERATION OF LATENT POWERS
ACTIVATION DECISION, FEB 28, 2022, AGENDA ITEM #10

To be concise, there are only two legal documents, one constitutional and one LAFCO specific, that must inform the LAFCO decision-making process regarding the Monterey Peninsula Water Management District's ('Water District') application to activate latent powers: the U.S. Constitution and the Cortese-Knox-Hertzberg Act. The stipulated condition of feasibility applied and was fully, extensively and expertly vetted, establishing that the CalAm buyout is unquestionably feasible. All the other unrelated issues brought forward lie outside the scope and jurisdiction of LAFCO's decision-making authority. Unfortunately, commissioner bias and personal interests interfered with an objective deliberation of the facts presented. By reason of this faulty and illegal decision, a forced reconsideration application was necessary due to the constitutional voter mandate MPWMD was obligated by law to follow through on to enactment.

To reiterate a few salient points, I would like to remind you that former LAFCO Commissioner and current Marina Mayor, Bruce Delgado, wisely advised that LAFCO can avoid a future "Fora-type black eye" by recognizing the inherent

benefit MPWMD's buyout action will have, not only in rescuing the Carmel River from CalAm's illegal extraction harm, but will save the Salinas River from catastrophic destruction. As Holy Scripture warns us to beware of ravenous wolves in sheep's clothing, many among us have warned our communities of the wolf in sheep's clothing that CalAm exemplifies. Our Founding Fathers placed their trust in "We the People" because the people are wiser in preserving our God-given assets than money-driven entities that care little about how or from whence their profits derive. The people placed trust in you to carry out their wishes and to ensure their well-being. This is a weighty entrustment.

Additionally, you have an obligation to obey the governing law, which also exists to protect the public good. The Cortese-Knox-Hertzberg Act is law that reinforces the requirement that LAFCO consider and support that trust by respecting and enacting the interests of the voters, the residents, the property owners of the "affected territory" which in this instance is the Monterey Peninsula.

MPWMD is exercising its duty to the voters and our constitutional process, the law of the land. Most importantly, the core subject of this LAFCO decision process is the feasibility of the buyout, which has been thoroughly vetted and proved to be feasible by multiple credible parties, to include LAFCO's own independent consultant. These experts conducted extensive review and analysis of all related parameters to deliver a positive outcome. All these other issues are extraneous to the application and decision-making process, and only serve as a distraction or excuse to obtain a political decision infused with fear and false assumptions or ones that fall outside the purview and jurisdiction of LAFCO and the Cortese Knox Hertzberg Act that governs this action.

This reconsideration application constitutes a specific modification requiring a reversal of the issued disapproval decision. This reconsideration application is replete with new and different information, one salient point being the Monterey County Assessor's announcement that due to increases in residential and commercial property values, there will be approximately \$10 million in tax revenues for districts that are projected to lose approximately \$1.7 million in tax losses incurred as a result of a successful buyout. MPWMD is committed to mitigating that loss, adding to the increased tax revenue anticipated by Assessor Vagnini, meaning there is no real loss, only wonderful generosity on display by the Water District.

To disobey both the U.S. Constitution and the specific LAFCO governing law constitutes a dereliction of duty and sets LAFCO up for future litigation by numerous parties, creating an unnecessary expense burden on county taxpayers. It is clear that LAFCO has ignored its inherent responsibility to care about and respect the interests of the voters, residents, and property owners of the affected territory, which consists of 91,717 Monterey Peninsula residents of the "affected territory." Law requires LAFCO to represent the interests of the public as a whole and not solely the interests of any appointing authority. The public good is at stake. It is glaringly obvious that LAFCO is in violation of these statutory governing rules/stipulations. The reconsideration application requires a serious, specific modification, that is, reversal of disapproval to reinstate the original LAFCO staff recommendation of conditional approval. This is legally imperative.

Professional statistical analysis and hydrogeological evaluation of CalAm's Monterey Peninsula Water Supply desal project EIR reveals fraudulent manipulation of modelling data used to advance CPUC certification, as

demonstrated and substantiated in the published documents Dr. Ron Weitzman, President of Water Plus, provided in your agenda packet. Instead of accusing Monterey Peninsula and others of being anti-CalAm, it would be far more propitious and accurate to acknowledge that CalAm is anti-community while being solely pro-profit no matter the adverse consequences. This calamitous defect does not exist with the MPWMD – quite the opposite. LAFCO has to be a genuinely good steward of our vital resources assigned under its jurisdiction. Your reconsideration application approval would ensure our water and food security, which is the whole intent of the buyout effort.

Logic alone should put you on alert that there are solid, unassailable reasons that concerned agencies have denied permits for CalAm's desal project. The buyout is an indispensable component of water and food security. Not only will the buyout protect the Carmel River, but it would prevent the CalAm desal project from inflicting lasting harm to the Salinas River, as well as protect the capacity of the Salinas River's rubber dam from serious impairment. while ensuring its ability to supply irrigation water to Salinas Valley growers. The Salinas River, like the Carmel River, supplies vital underlying aquifers. The State Cease and Desist orders finally stopped CalAm's illegal extractions from the Carmel River, but the future of the Salinas River is in jeopardy.

The big difference between the two rivers is that the Salinas River is on the California critically over drafted groundwater basins list and is subject to the Sustainable Groundwater Management Act mandates to restore, protect, and preserve its aquifers. Despite this fact, CalAm has installed a slant well to extract ground water from the Freshwater Dune Sand aquifers and the 180 Foot aquifer,

causing and exacerbating seawater intrusion, according to hydrogeologic environmental engineer experts' analyses. The California Coastal Commission has expressed concern that the CalAm desal project will harm the Salinas River, which constituted one of many environmental reasons it denied CalAm's permit as incomplete. Contrast this scenario with the MPWMD's water projects. Instead of doing harm to our precious water and environment resources, these water projects actually enhance them by treating contaminated water sources to potable and irrigation standards and useful purposes, which in turn fulfills the state mandate to recycle all possible water resources.

To emphasize why CalAm's desal project is deleterious to the environment and our aquifers, even CalAm's hydrogeology consultant admitted that the CalAm slant well pumping is designed to replace freshwater in the Dune Sand/A aquifer unit and 180 ft aquifer with seawater..." as quoted in professional engineer and hydrogeologist Barbara Ford's study, Section on Slant Well Designed to Replace Freshwater with Seawater, p. 24-25, which cites the CalAm hydrogeological consultant, HydroFocus, confirmation that the slant well is designed to cause seawater intrusion (excerpt from p. 36), as provided in the agenda packet. This CalAm slant well design feature is meant to deplete the Salinas River aquifers and render them totally seawater intruded, thereby justifying the need for its desal plant. As Ford explains in her "Evaluation of the Ground Water Modeling for the CalAm Monterey Peninsula Water Supply Project", page 25, "The MPWSP proposes slant well pumping to replace freshwater aquifers with seawater as a supply for the desalination plant." The proven scientific fact that the desal project will devastate the Salinas River aquifers is alarming.

Staff genuinely, and correctly, recommended approval. You denied it. MPWMD exerted extraordinary effort to accommodate, negotiate, and respond to every request, objection, or issue presented as reason for denial. It is noteworthy, for example, that CalAm had charged rates of \$200 and \$500 as documented by the LA Times, exposing CalAm's exploitation of the very satellite water systems in question. When CalAm purchased these water systems from Monterey County, it did not consider their disadvantaged community status, thus causing CalAm customers to protest to the CPUC in order to obtain fair water rates. Today, Chualar ratepayers pay \$30 per 5,000 gallons as compared to Marina Coast water District customers paying \$66 for 5,000 gallons, while CalAm's Monterey Peninsula customers pay \$125 for the same amount of water. From anyone's perspective, Chualar obtained a better deal, a deal that CalAm cannot contravene after the MPWMD buyout due to its disadvantaged community status and CPUC oversight, accompanied by the MPWMD promise to intervene on behalf of Chualar and the other satellite water systems should CalAm not honor this status. Please also note that CalAm, by purchasing these satellite water systems from Monterey County, it expanded its service customer base, yet it did not institute economies of scale pricing, as it states it does. That is why the rates were extremely high despite an expanded base, when if economies of scale had been employed, their rates would not have been elevated. CalAm also charges ratepayers for the costs of its acquisitions of other out-of-the-area water systems, and even charges for water not used due to customer diligent water conservation. I reiterate my previous written contention that the public has placed high trust in MPWMD, thusly voting in the mandate to buyout CalAm, a company that has failed for decades to produce a single drop of new water, a company that

persistently defied state cease and desist orders to stop its illegal extractions from the Carmel River, and later caused adjudication of the Seaside basin also for over pumping its legal allocations. It is doing the same to the Salinas Valley Basin. Only three public water companies have come to the rescue to create a viable water supply, thus saving CalAm's bacon, saving CalAm from disgrace and severe state penalties. M1W and MCWD, along with MPWMD are actively producing the critical water supply for our communities. Perhaps there is hope that the smaller satellite water systems will be able to participate in that endeavor in the future. Moving the buyout forward is the only viable solution. The ratepayers can no longer sustain the highest water rates in the nation. CalAm is presently seeking even more rate increases with the CPUC, while stalling and blocking a water purchase agreement for Pure Water Monterey Expansion for two years plus. CalAm has cost our communities untold millions in stressful litigation.

By standing by MPWMD's application from the beginning, LAFCO staff did a commendable job. You know in your hearts that approval is the right decision. MPWMD is a public agency role model and hero to our communities. You too can be a hero, so much better than being a villain. I hope your sense of duty, honor, and integrity will shine today, that you will be that hero too. A linguistic technicality, such as specific modification, should not derail approval. I urge you to modify your decision specifically and vote to approve MPWMD's latent powers so it can efficiently and effectively provide the urgently needed water supply.

The voter mandated buyout is key to water health and food security. It provides protection during drought years. Please do not jeopardize our collective future. Authors of our constitution placed their confidence in "We the People". You

should do the same. The CalAm water tyranny must end. Trusting the people is the underlying principle that made our country great, and continues to ensure that greatness. It is the power of truth and freedom. Your decision is critical. If you want another prolonged Carmel River type disaster, vote disapproval. If you want to support water and food security for current and future generations, vote approval.

Thank you for your attention in reading my input, and for your dedicated service to our communities. God bless you and your honorable work.

Very respectfully,

s//Margaret-Anne Coppernoll//

Margaret-Anne Coppernoll, Ph.D.
Marina

From: Ron Weitzman <ronweitzman@redshift.com>
Sent: Saturday, February 26, 2022 9:47:57 AM
To: waterplus@redshift.com <waterplus@redshift.com>
Subject: Water Article re LAFCO Fiasco in Today's Herald

The *LAFCO Fiasco* continues...

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

Officials appeal to LAFCO

By Dennis L. Taylor

newsroom@montereyherald.com

MONTEREY >> Monterey Peninsula water officials on Thursday paved the way for an inter-governmental agency to support a plan to turn California American Water Co. into a public utility by tempering one of the key objections raised by the agency, but there was some apprehension about what good it would actually do.

The Local Agency Formation Commission, or LAFCO, will decide on Monday whether to support the Monterey Peninsula Water Management District's bid to acquire the assets of Cal Am. Voters, by passing Measure J in 2018, mandated a public takeover of the private company.

Water district staff and board members said they were dubious whether the LAFCO board will change its mind. It has already denied the district once, overruling its own staff's recommendation, and Monday's meeting will discuss the water district's application for reconsideration.

Several LAFCO commissioners in past meetings voiced concerns that a public takeover of Cal Am will result in lost property tax revenue to special districts that is currently paid by Cal Am. 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 their annual revenue, and many would lose only a fraction of 1%.

The application for reconsideration, which was passed unanimously by the water district board on Thursday, provides a commitment of financial assistance to roughly 14 special districts that would stand to lose \$5,000 or more of revenue they receive from taxes Cal Am pays. The commitment would be transitory, lasting likely four or five years.

All the financial assistance is contingent upon LAFCO approving what's called a "latent powers" agreement for the district. Signing off on a latent powers agreement would need to show that the district has the operational and financial capability to run an operation like retail water distribution.

The water district and even LAFCO's own independent analysis showed that it does. LAFCO commissioners, except for Seaside Mayor Ian Oglesby and Monterey County District 4 Supervisor Wendy Root Askew, ignored both analyses and blocked the district's latent powers late last year.

Many see the water district's offering to LAFCO as a Hail Mary pass. To some degree, the drama of a LAFCO meeting and the commissioners who object to the takeover could be superfluous, as the water district has all but vowed to sue LAFCO if it continues to block the acquisition and the voters' mandate. So, both sides will likely need to spend the money to lawyer up and battle it out in Monterey County Superior Court.

On Wednesday, Evan Jacobs an external affairs representative for Cal Am, said the offers from the water district have already been put out there and that it's pointless for the district to continue the push.

"Their approach on these subjects has already been shared," Jacobs said in an email. "It's time for (the water district) to stop spending millions of dollars on an infeasible government takeover and return the focus to working on sustainable water supply solutions for the residents and businesses of the Monterey Peninsula."

Others have questioned the reconsideration document, but for opposite reasons. Michael Baer, speaking during Thursday's water district meeting, said the district might as well dispense with the formalities of a reconsideration request.

You should just tell LAFCO that "you know we're going to take action based on your decision, and if you want to talk to us, come talk to us," Baer said.

With the district offering to provide financial assistance that would help special districts with their loss of property tax revenue, at least for a transitory period, some have wondered what's really behind LAFCO digging in its heels. Marli Melton with Public Water Now, which crafted Measure J, said publicly on Thursday what others would only say privately.

"I don't know if any of them bothered to read all of the good work you and their staff have done," she told the district board. "I'm even wondering if their seemingly minor and unrelated objections were genuine or whether they were just kind of brought forth as something to justify their objections that they don't want to say publicly. I guess we'll never know."

John Tilley with the Monterey County Property Owners Association called into the district meeting to say the board should question the work that is being done to honor the voter-approved mandate.

"The work that's being put into Measure J right now has seriously taken away from the district focusing on water demand and supply," he said. "The idea of Measure J is supplanting the idea of addressing the needs of this community for demand and supply."

Proponents of the Cal Am buyout said after the meeting that Measure J is not "an idea," rather the will of the people.

Susan Schiavone, a Seaside resident and long-time advocate for a public takeover of Cal Am, said the water district has given LAFCO everything they wanted and was also dubious about whether the commissioners were expressing their true reasons for siding with Cal Am.

"You've been overly nice and cooperative with LAFCO and I support that and I respect you for it," she said. "I'm not sure what assurance is needed to relieve their anxiety, even though I find their reasons to be not very good reasons."

From: Arno Featherstone <agimbibwe7@gmail.com>
Sent: Sunday, February 27, 2022 9:46 AM
To: Maluki, Safarina x5109 <MalukiS@monterey.lafco.ca.gov>
Subject: Public Comment – Agenda Item #997 3839 1941 LAFCO vs. buyout

Hello;

I wish to comment on the discussion about LAFCO board members actively blocking the buyout of Cal Am for Monterey County. I do not consider myself completely knowledgeable on the subject but this much appears obvious to many of us here on the peninsula -

*The buyout was approved by a majority of Monterey County voters, that IS the will of the people, that is why we live in a democracy.

*The studies have all shown the buyout is feasible, popular AND approved.

*We have a water crisis in this county, in this state. To be under the boot heel of a non-local entity who is on record for price gouging, for mismanagement of this precious resource is just plain wrong.

*There are documented examples across the country of successful local buyouts like this, that properly serve the needs of the citizenry.

*The LAFCO members in question appear to be compromised by their allegiance to Cal AM and NOT to the citizens of Monterey County for whom they ostensibly serve, which should disqualify them from participation on this board.
Only an agenda of critical thinking and reasonable discussion in this matter is required.

Please consider this during your meeting and make the right decision for Monterey County.
Thank you,
Arno Featherstone, Seaside.

February 26, 2022
LAFCO of Monterey County
Executive Officer, Kate McKenna
Chair Lopez, Commissioners, and Staff
Via email:

Dear Chair Lopez, Commissioners, and Staff,

SUBJECT: ADDENDUM TO SUPPLEMENTAL WRITTEN COMMENTS TO
COPPERNOLL WRITTEN

COMMENTS OF FEB 3, 2022 FOR MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT

APPLICATION FOR RECONSIDERATION OF LATENT POWERS
ACTIVATION DECISION, FEB 28,
2022, AGENDA ITEM #10

Due to Commissioner concerns about Salinas Valley water status, I would like to bring to your attention the attached letter that was sent to the State Water Resources Control Board (SWRCB) to alert them about questionable practices being performed by California American Water Company (CalAm) to disguise the amount of freshwater it was extracting from the Salinas River aquifers, namely, the Dune Sand Aquifer that consists of the Perched Dune Sand and Dune Sand aquifers that contain primarily freshwater that is sourced from the Salinas River surface flows and percolated downward in vertical fashion to the underlying aquifers such as the 180 foot and 400 Foot aquifers. Like the CalAm fraudulent manipulation of modeling data in its EIR as documented in the Barbara Ford hydrogeological study provided in your agenda packet, CalAm disguised the amount of water it was taking from these aquifers as a way to prop up its insistence on proceeding with its MPWSP desalination project for which it had installed a test slant well (TSW) in the Dune Sand Aquifer without a California State Water Resources Water Control Board appropriations permit. Such a permit was highly unlikely due to the California Sustainable Groundwater Management Act (SGMA) of 2014 that placed the Salinas Valley Groundwater Basin (SVGB) on its critically over-drafted groundwater basin list. SGMA mandates that these Salinas Valley aquifers be restored, protected, and preserved. Being over-drafted, there is no surplus water and no permits have been granted to CalAm nor any water rights to the Salinas Valley. To date all CalAm requested permits to the SVGB have been denied.

The Castroville Seawater Intrusion Project (CSIP) and the Salinas Valley Restoration Project (SVRP) funding supports Salinas River surface water flows. Scientific research titled Airborne-Electro-Magnetic (AEM), a technology used by the United States Geological Society (USGS), was employed by Stanford University Woods Institute to explore and monitor the freshwater content and extent of seawater intrusion in the Salinas Valley Groundwater Basin near the coastal areas.

CalAm placed the upper segment of its TSW into the Dune Sand Aquifer where it has approximately 46% of the screened intake volume in the Dune Sand Aquifer. However, CalAm's published data indicated only 15% of the volume was freshwater from the Dune Sand Aquifer. That is because the water quality conductivity sensor was placed below the Dune Sand Aquifer and above the 180 Foot Aquifer in such a way as to camouflage the accurate total freshwater volume actually being extracted from the Dune Sand Aquifer. Why did CalAm produce this fraudulent report and why did CalAm locate its water quality monitoring sensor below the Dune Sand Aquifer? More than likely because the report was used to justify the creation of its "return" policy that would validate its circumvention of the Monterey County Agency Act that prohibits exporting water from the SVGB, thereby fooling overseers and others desperate for alternate water supplies, an act in total disregard of SGMA. Taking freshwater from the legally protected sub-surface flow of the Salinas River has been a longtime concern of communities interested in sustainable, affordable, and environmentally sound future water supply for all Monterey County residents. That is the *raison d'être* for the long struggle that culminated in Measure J and the current LAFCO activation of MPWMD latent powers request.

I urge commissioners to read the attached SWRCB letter to ascertain additional reasons Monterey Peninsula voters passed Measure J as a self-preservation action. The letter also provides insights into why CalAm has been denied permits to the SVGB not only because it has no source water rights for its desalination project, but also because there are extensive environmental harm reasons for denial. Like the Carmel River, the Salinas River provides habitat to steelhead trout, red-legged frogs, and many ESHA in the coastal area. CalAm's project threatens Coastal Zone agriculture as well.

The Monterey Peninsula Water Management District, along with Monterey One Water and Marina Coast Water District have worked determinedly to achieve an

alternate water supply, one that CalAm failed to produce for decades. Their water project, Pure Water Monterey, has been hailed as a national role model for recycled water projects and has received national acclaim and awards.

Please do not fall prey to CalAm's propaganda, misinformation and fear mongering campaigns conducted to promote its project. That project will only bring the same, and even worse, harm to the SVGB that it brought to the Carmel River. Please do not wait until it is too late to act. Be proactive and vote approval for activation of latent powers so the critically needed water supply projects can proceed without further consternation or expense to taxpayers. Many years have been expended by citizens attempting to warn communities about the massive damage to our water supply that CalAm represents, and is evidenced by the multiple Cease and Desist Orders issued over decades to stop CalAm from illegally over pumping the Carmel River and harming its endangered species and habitats.

I submit this Addendum and attached document in Memory of, and in Honor of, Charles Cech who passed away this past December 2021. He was a proud U.S. Navy veteran, a remarkable colleague, cherished citizen, and extraordinarily loving husband. He was indefatigable in his dedication to the well-being of all our communities and only sought right action and solid science. He contributed his heart and his great intelligence to better the world around him, totally unselfishly devoted to all of us. He is greatly missed and loved. Please help honor his memory and his vigorous dedication to water solutions for Monterey County by reading and taking seriously his carefully studied scientific water research findings.

Very respectfully,
s//Margaret-Anne Coppernoll//
Margaret-Anne Coppernoll, Ph.D.

Enclosure: Charles Cech Letter to SWRCB, December 6, 2020

My name is Charles Cech, I am a 45 year resident of Monterey. I moved to Monterey in 1975 to join a startup company named Pro Log and spent the next 26 years in various segments of the microcomputer automation business. I have spent the last ten years educating myself about the water issues on the Monterey Peninsula. After studying local public documents, I believe the following may be one of my most important findings.

Recently the Stanford University Woods Institute for the Environment conducted an Airborne-Electro-Magnetic (AEM) imaging study of the Marina Coast area of the Monterey Bay. This is the same technology used by the United States Geological Survey (USGS) to monitor and measure our national fresh water resources. The Stanford study determined that the shallow Dune Sand Aquifer (DSA), is located where Cal Am placed the upper segment of its Test Slant Well (TSW). I propose that the DSA contains accumulated surface flow of the Salinas River. This water is paid for with funds from the Castroville Seawater Intrusion Project and the Salinas Valley Restoration Project.(CSIP/SVRP).

Based on the results of the AEM study, it appears that Cal Am has been drawing water from the DSA without a California State Water Resources Control Board appropriations permit. It is my understanding that this permit can only be obtained by submitting a fully certified EIR to the SWRCB and by conducting public hearings before the SWRCB Board. It is also my understanding that the County is required to maintain fresh flows in the Salinas River to protect and preserve the endangered species in that river, including California Steelhead Trout and red-legged frogs. I am confident that those freshwater flows also make the DSA an integral part of the CSIP/SVRP..

The Cal Am TSW has approximately 46% of its screened intake volume in the DSA field. It seems logical that based on the AEM study the total water drawn by the TSW should contain around 46% fresh groundwater. However, Cal Am's published test data indicates a very small portion (less than 15%) of the TSW drawn water is fresh ground water. This discrepancy may be the result of the placement of the TSW water quality sensor located 305 feet down the TSW. This places the sensor above the 180-foot brackish water aquifer screened intake, and beneath the DSA fresh water screened intake. I believe that if this sensor had been placed near the top of the TSW, where the 180 foot aquifer water and DSA water are both present and mixed, the freshwater quality and quantity measurements would have been far more representative of the actual source intake water quality.

Was the water quality sensor placed in this location deliberately to hide the amount of fresh water being drawn by the TSW? Is it illegal to draw fresh water from an aquifer Cal Am does not own and to which Cal Am cannot acquire any water rights? Is the DSA actually the legally protected sub-surface flow of the Salinas River? Will drawing fresh DSA water increase seawater intrusion or threaten endangered species in the Coastal Zone? Is it illegal under California water rights law to extract, export, and sell fresh water taken from an over-drafted river basin without any groundwater rights? I suggest that the answer to each of these questions is YES!

Please note that the DSA contains mostly fresh groundwater in the Coastal Zone, therefore the California Coastal Commission should reject the Cal Am Desalination project! That project, according to the AEM study, indicates the slant wells will be taking fresh Coastal Zone groundwater resources that are needed to provide water for the City of Marina and for Coastal Zone agriculture. I propose that Monterey One Water (M1W) can provide the needed quantity

of an environmentally superior, more cost effective, and publicly-owned water for our Peninsula. We need to support the M1W potable water solution.

Charles Cech, Monterey
December 6, 2020

From: Michael Baer <mgbisme@yahoo.com>
Sent: Monday, February 28, 2022 12:03 AM
To: McKenna, Kate x5016 <McKennaK@monterey.lafco.ca.gov>
Subject: a different sort of correction from Baer

Ms. McKenna,

At this late hour I feel compelled to write to LAFCO again with the following correction. I attended the MPWMD regular meeting on Thursday and was quoted in the Herald Friday with the following:

Others have questioned the reconsideration document, but for opposite reasons. Michael Baer, speaking during Thursday's water district meeting, said the district might as well dispense with the formalities of a reconsideration request.

You should just tell LAFCO that "you know we're going to take action based on your decision, and if you want to talk to us, come talk to us," Baer said.

I then sent the following email to Mr. Taylor who wrote the article:

I think you misquoted me. I don't believe I said "we" and "us", as I am not part of the district. My recollection was I said "you" (the district) and "they" (lafco).

I know that was my intent.

However I am grateful for all the fine reporting you have done over the last several months.

Thank you in advance, Ms. McKenna, for including this into the record.

Michael Baer

----- Forwarded Message -----

From: Michael Baer <mgbisme@yahoo.com>
To: newsroom@montereyherald.com <newsroom@montereyherald.com>
Sent: Saturday, February 26, 2022, 04:46:25 PM PST
Subject: Baer with feedback

I think you misquoted me. I dont believe I said "we" and "us", as I am not part of the district. My recollection was I said "you" (the district) and "they" (lafco).

I know that was my intent.

However I am grateful for all the fine reporting you have done over the last several months.

Michael Baer
[Sent from Yahoo Mail on Android](#)

From: mwchrislock@redshift.com <mwchrislock@redshift.com>
Sent: Monday, February 28, 2022 8:32 AM
To: McKenna, Kate x5016 <McKennaK@monterey.lafco.ca.gov>; Maluki, Safarina x5109 <MalukiS@monterey.lafco.ca.gov>
Subject: LAFCO Reconsideration of MPWMD application
Importance: High

With Commissioner Leffel's Measure O and Measure J ballot arguments attached.



February 21, 2022

LAFCO of Monterey County
c/o Clerk to the Commission
132 W. Gabilan Street, Ste. 102
Salinas Ca 93901

Re: LAFCO Reconsideration of Water Management District application

Chair Lopez and Commission Members:

We have new information that raises a serious concern of bias.

We found that Commissioner Leffel was a signatory on two opposition ballot arguments against the Cal Am buyout – Measure O in 2014 and Measure J in 2018. She signed these rebuttal arguments as co-founder and President of the Monterey County Business Council.

Twice, in two different elections, she has publicly declared her clear opposition to the buyout of Cal Am. Her history of bias against the public buyout is unarguable. Her LAFCO votes continue to demonstrate this long-standing bias.

How could she bring an open mind to the matter of approving the Water Management District's application? Commissioner Leffel had made up her mind on this issue before the District even submitted its application.

LAFCO decisions should be fair and transparent.

We demand Commissioner Leffel recuse herself from any future votes on this matter.

We hope LAFCO will reconsider and approve the District's latent powers.

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

MEASURE O

2014

Monterey Peninsula Water Management District

ARGUMENT IN FAVOR OF MEASURE O

Vote YES on Measure O for lower rates and local ownership. YES means keeping the investments on the Peninsula and owning the assets of our water system.

Local public ownership means lower rates for water. By eliminating profit, and qualifying for lower cost municipal bonds, a study shows that public ownership in California delivers water 20% cheaper.

Measure O could bring additional jobs to the Peninsula. Cal-Am, a California corporation which is a wholly-owned subsidiary of a private New Jersey company takes revenues out of our community.

YES means savings as public agencies operate without profit. The savings will boost our local economy. Cal-Am states its rates should increase by 41% by the end of 2018. Under Measure O, rates would be set locally.

Local, public ownership of water is common since water is a public resource. 85% of Americans get their water from public agencies where all decisions are local.

Investor-owned utilities (IOU's) like Cal-Am are beholden to their shareholders, not to local ratepayers. That's why Cal-Am was able to waste over \$35 million in failed efforts to find new water and pass those increases off to you. Since 2003 Cal-Am has failed three times to produce new water. Under the current system, we take risk while shareholders reap any reward.

Public ownership promises long term supply reliability and controlled costs. In fact, success to date in developing new water sources has come from the local Monterey Peninsula Water Management District.

Background citations available at www.PublicWaterNow.org

We pay for our water, we should own the system that delivers it. It's common sense.

The League of Women Voters of Monterey County endorses Measure O.

Vote YES on Measure O.

/s/ Beverly Bean, President, League of Women Voters of Monterey County
/s/ Richard Stillwell, Local Business Owner
/s/ Alan Haffa, MPC Professor

/s/ Ronald T. Cohen, Managing Director, Public Water Now
/s/ Priscilla Helm Walton, Past President, Democratic Women of Monterey County

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE O

The proponents of Measure O didn't let the facts get in the way of their argument.

There may be some arguments for public ownership of the water system, but cheaper water isn't one of them. A well-respected think tank published a paper concluding "Household expenditures on water at the county level decrease slightly as the share of private ownership increases..." (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=707131)

Nor is there a six year time period in the past – or the foreseeable future – when your water rates will have tripled.

Only solving our water shortage problem will steady our water rates and avoid rationing. And Measure O won't provide one drop of new water for our parched system.

Led by the six mayors who make up the cities in the Monterey Peninsula Water Management District, a desal project is finally moving to solve our water shortage problem. Measure O jeopardizes the financing, threatens to delay the restoration of the Carmel River and risks forcing us into water rationing.

And here's the fatal flaw: turning our water system over to the Monterey Peninsula Water Management District. MPWMD has never run a water system. It hasn't produced any major new water projects in 36 years despite spending over \$100 million of taxpayer money. Yet Measure O gives MPWMD the green light to spend hundreds of millions of your money – without another vote of the people.

If there's a time for public ownership – it's not now.

If there's a path to public ownership – this isn't it.

The bottom line: Measure O is a Risk We Cannot Afford.

www.riskwecannotafford.com

/s/ Moe Ammar, President Pacific Grove Chamber of Commerce
/s/ Brian LeNeve, Carmel River Steelhead Advocate
/s/ Mary Ann Leffel, President, Monterey County Business Council

/s/ Ron Chesshire, Former Board Member-Monterey Pen. Water Management Dist.
/s/ Ron Pasquenilli, President, Monterey Peninsula Taxpayers Association

BALLOT MEASURE INFORMATION HAS BEEN PRINTED "AS SUBMITTED" AND PROOFED BY THE PUBLIC AGENCY SUBMITTING THE MEASURE PRIOR TO PRINTING

170 Measure J: Monterey Peninsula Water Management District Public

Ownership of Water System Initiative

Result	Votes	Percentage
▼ Yes	23,757	55.81%
No	18,810	44.19%

Results are officially certified.

Source

November 6, 2018

Status:

▼ Approved

Topic:

Local water

Related articles

Local water on the ballot

November 6, 2018 ballot measures in California

Monterey County, California ballot measures

See also

Download PDF (Free)

File size: 487KB. Full Version

PDF Hub Online

Open

Text of measure

Ballot question

The ballot question was as follows:^[1]

Join our free briefing on February 24 to discuss what that means for the direction of the major part...

| Opposition

Opponents

The following individuals signed the official argument against the measure:^[3]

- Mary Ann Leffel, co-founder, Monterey County Business Council
- Brian LeNeve, conservation chair, Carmel River Steelhead Association
- John V. Narigi, chairman, Coalition of Peninsula Businesses
- Rick Heuer, president, Monterey Peninsula Taxpayers Association
- Sue McCloud, former mayor of Carmel-by-the-Sea

Arguments against Official argument

The following official argument was submitted in opposition to the measure:^[3]

Join our free briefing on February 24 to discuss what that means for the direction of the major part...

“ We share your frustration with Monterey Peninsula water rates. Kicking out Cal Am may sound appealing — until you examine the facts.

Remember, it's not water itself that costs money - it's the cost of delivering that water to your house.

Water has to be pumped, purified, stored, and delivered through miles of pipes, pumps, water testing facilities and storage tanks. Cal Am has invested many millions of dollars to build and maintain this water System.

If we pass Measure J in 2018, the history of similar takeover attempts shows it'll be 5 to 7 years of legal battles before the Monterey Peninsula Water Management District (MPWMD) could seize the system from Cal Am by eminent domain.

By then, Cal Am will have completed the desal plant that will solve our chronic water shortages.

By then, the cost of buying out Cal Am's property will have soared to approximately \$700 million or more. That's \$1,100 a year on every customer's water bills or property taxes — for the next 30 to 50 years. Depending on how it's financed, that's \$35,000 to \$55,000 per household.

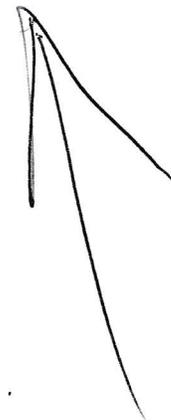
That's on top of the rates you're currently paying. And promises of lower rates have no basis in fact, because no government takeover of a water system in California has resulted in lower costs to customers in the last 20 years. In the Santa Cruz County community of Felton, the government takeover campaign claimed buying the system wouldn't cost more than \$2 million. After years of litigation, it actually cost \$13.4 million - plus \$2 million in administrative and legal fees. Every household is now paying over \$16,000 in bond payments. Plus water rates themselves have gone up 96% since the government takeover.

We're progressives and conservatives. We're liberal Democrats and anti-tax Republicans. But we're united in opposing Measure J.

Stop the Costly Water Boondoggle VOTE NO on Measure J.

www.StoptheCostlyWaterBoondoggle.com ^[2]

”

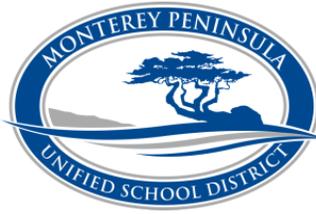


Path to the ballot

See also: Laws governing local ballot

This measure was put on the ballot through a succe

Join our free briefing on February 24 to discuss what that means for the direction of the major part...



Monterey Peninsula Unified School District

Business Services Department

P.O. Box 1031
700 Pacific Street
Monterey, CA 93942-1031

(831) 645-1269
(831) 392-3446 FAX

February 28, 2022

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

Subject: Comment Regarding the Reconsideration of Monterey Peninsula Water Management District's 2021 Sphere of Influence, Annexation, and Latent Power Activation Proposal

Dear Ms. McKenna:

On January 31, 2022, the Monterey Peninsula Water Management District (the "Water District") submitted an application for reconsideration of Local Agency Formation Commission of Monterey County's ("LAFCO") disapproval of the Water District's proposal seeking to activate its latent powers to provide potable water production and distribution services ("Reconsideration Application").

In its Water District's Reconsideration Application, the Water District purports that there is "new or different facts that were not or could not have been previously presented to the Commission," related to, inter alia, comments submitted by the Monterey Peninsula Unified School District ("School District").

The "new or different facts" submitted by the Water District largely consists of the Water District's January 4, 2022 response to the School District's comment letters ("January 4 Letter"). The School District has had an opportunity to review the Water District's January 4 Letter and is unpersuaded that it alleviates the concerns raised in the School District's October 22, 2021, and December 3, 2021 comment letters, most significant of which is the School District's concern regarding the backfill of revenue losses.

In its January 4 Letter, the Water District appears to attempt to shift responsibility for determining the financial impacts of the Water District's proposed acquisition to the School District. In response to the School District's request that the Water District obtain a formal response from the CDE confirming that the State will backfill all of School District's lost property tax (including tax increment) revenues related to the Water District's proposed acquisition, the Water District advises that that the "school district, or its Sacramento attorneys, are better equipped to engage CDE in greater detail."

Likewise, the School District's prior comment letters also raised concerns regarding the impact on revenues that are not offset by the Local Control Funding Formula ("LCFF") school funding from the State and other financial impacts including, but not limited to impacts on obligation bonds and outstanding debt, tax rates, assessed value of taxable property, and the ability to issue

additional general obligation bonds (collectively “Other Financial Impacts”). The Water District’s January 4 Letter provides a generalized response to the School District’s concerns and again attempts to shift responsibility, stating that the impacts “must not be considered losses because other payers will cover them. The mathematics of doing so is not for the [Water] District to calculate.”

The School District reiterates that the proposed acquisition should not proceed until all financial impacts on the School District and similarly-situated school districts and public agencies (collectively, the “Impacted Agencies”) is fully understood and calculated. The Water District, as the applying agency, should be responsible for all such analysis.

The Water District also purports that the School District should not raise concerns regarding lost property taxes related to the Water District’s proposed acquisition, on the basis that the School District did not object to several transfers or acquisitions that took place in the past. The Water District provides no comparison of the financial impacts of those other projects and fails to consider the unprecedented circumstances school districts presently face.

As such, the School District requests that an approval of the Reconsideration Application be conditioned on Water District’s satisfaction of the following terms:

1. The Water District will contact the CDE to determine whether the State will backfill all of School District’s lost property tax (including tax increment) revenues related to the Proposal. While we appreciate the email correspondence and effort to reach out to CDE, we request a more formal response on CDE letterhead with specific statutory authority supporting the CDE’s conclusion.
2. LAFCO will order a report which includes a detailed analysis of the financial effects on the Impacted Agencies, including the School District. Such a report will include a detailed analysis of, but is not limited to, the following: the effects on school district general obligation bonds and outstanding debt, tax rates, assessed value of taxable property, ability to issue additional general obligation bonds, and other financial matters that affect school districts. We note there has been some general analysis performed on this topic (Water Management District July 12, 2021 memo) whereby one of the conclusions was that future increase in assessed values and reallocation of property taxes would ameliorate these impacts. However, because assessed value would likely have increased for all properties in the absence of the proposed annexation, the loss of taxable property does present an impact to the School District. This includes an impact to its existing obligations (in the form of higher taxes to its existing taxpayers due to the reallocation) and its ability to issue future obligations (due to the reduction in total taxable property).
3. If the State will not backfill all such lost property tax revenues and the School District is not made whole, the Water District agrees that it will ameliorate all of School District’s losses for a reasonable period of time pursuant to a mitigation agreement. We believe that this last option presents a workable solution if the decision is to proceed with the Reconsideration Application approval.

The above conditions will ensure that School District and other Impacted Agencies are not unduly burdened by the proposed acquisition. I believe all of the involved parties can agree that educating our children is a top priority, and these proceedings should not detract from our students' educational opportunities.

Thank you for your consideration.

Respectfully,

DocuSigned by:

7526B470DC3941C...

Ryan Altemeyer

Associate Superintendent, Business Services
Monterey Peninsula Unified School District

cc: Jonathan Brinkman, Senior Analyst LAFCO

From: Michael Baer <mgbisme@yahoo.com>
Sent: Monday, February 28, 2022 11:50:37 AM
To: McKenna, Kate x5016 <McKennaK@monterey.lafco.ca.gov>
Subject: Confirmation on correction

Hi Kate,

Sorry for all the last minute emails.

I just received the following from Dennis Taylor on his Friday article at the Herald.

please add to the record if it is not too late.

Michael Baer

----- Forwarded Message -----

From: Dennis Taylor <scribe.taylor@gmail.com>
To: "mgbisme@yahoo.com" <mgbisme@yahoo.com>
Sent: Monday, February 28, 2022, 11:33:07 AM PST
Subject: Pronoun mixup

Hello Michael, hope you are well. This is Dennis from the Herald (if you don't recognize my personal email address). I just wanted to apologize for mixing up the pronouns in my recent article regarding LAFCO. In the future I will pay closer attention as I don't want readers making incorrect assumptions. I'm sure you'll be at the LAFCO meeting tonight. I know I will!
Warm regards,
Dennis

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Dennis Taylor
47 Katherine Ave.
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(831) 229-9846