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November 13, 2024

TO: Chair Anderson, Members of the Board and General Manager Stoldt
FROM: David C. Laredo, Counsel
RE: General Report of Pending Litigation effective November 13, 2024

This memo presents a public summary of litigations matters that are deemed to be open and active. This is a recurring memo; the newly updated data is shown in **highlighted text**.

1 – Monterey Peninsula Taxpayers Association (MPTA) cases:

Cases brought by MPTA are part of a series of six (6) separate lawsuits. These six cases collectively challenge various aspects of the District's collection of the Water Supply Charge.

1.a MPTA I – MPTA v. MPWMD; M123512

The initial challenge brought by MPTA regarding District collection of the Water Supply Charge was resolved by order of Superior Court Judge Thomas Wills in favor of the District, and against the challenge brought by MPTA.

**1.b MPTA II – MPTA v. MPWMD; Monterey County Superior Court 21CV003066
6th Dist. Court of Appeal H0-51128**

1.c MPTA III – MPTA v. MPWMD; Monterey County Superior Court 22CV002113

1.d MPTA IV - MPTA v. MPWMD; Monterey County Superior Court 23CV002453

1.e MPTA V - MPTA v. MPWMD; Monterey County Superior Court 24CV002642

1.f MPTA VI - MPTA v. MPWMD; Monterey County Superior Court 24CV003408

MPTA brought a total of six separate challenges against District collection of the Water Supply Charge within the District, raising different grounds compared to allegations in both MPTA I and MPTA II. The second challenge brought by MPTA against collection of the Water Supply Charge was resolved by Superior Court Judge Panetta against the District and in favor of MPTA. An appeal of the trial court decision was taken to the Sixth District Court of Appeal but the Appellate Court affirmed the trial decision to the effect that the sunset provisions set forth in District Ordinance No. 152 had been met and the District erred continuing to collect the Water Supply Charge.

The parties have agreed to postpone active litigation for all open MPTA actions pending implementation of the Sixth District Court of Appeal ruling in connection with MPTA II. District Litigation counsel,

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Michael Colantuono and Matthew Slentz have engaged in settlement discussions with Eric Benik and Prescott Littlefield, counsel for MPTA, in an effort to wrap up all litigation, address potential refunds and payment of attorney's fees.

2 – *MPWMD v. Cal-Am; 23CV004102*

This pending lawsuit embodies District efforts to fulfill the electoral mandate of Measure J to acquire ownership and operation of Cal-Am's Monterey Division water supply facilities.

Judge Vanessa Vallarta is the presiding judge for this case.

Judge Vallarta held two hearings in June and August, 2024, to consider Cal-Am challenges to the lawsuit (by demurrer). Judge Vallarta issued a tentative ruling in August stating her intention to resolve the matter in favor of the District and against Cal-Am, but took the matter under submission after oral argument stating her intent to provide a revised final order likely to align with her tentative ruling.

To date, the revised order has not been published.

On November 6, Cal-Am took the deposition of General Manager Stoldt to review details as to factual bases underlying this lawsuit.

Judge Vallarta has calendared a Case Management Conference in this matter for November 19, 2024, at which time clarity can be expected as to the next steps that will occur in this action.

3 – *MPWMD v. Local Agency Formation Commission (LAFCO); Cal-Am; 22CV000925* 6th Dist. Court of Appeal H051849

The District brought this lawsuit to challenge LAFCO's conduct and administrative decisions regarding exercise of District powers to acquire Cal-Am water system facilities in accord with the voter mandate in Measure J. On December 7, 2023 Judge Thomas Wills ruled in favor of the District, and against LAFCO.

The matter is now on appeal before the Sixth District Court of Appeal. Cal-Am and LAFCO have asked for a 45-day extension for their opening briefs (currently due 12/6). Briefing schedules and dates for oral argument will be clarified on December 6, 2024.

4 – *City of Marina; MPWMD, et al, v. California Coastal Commission (CCC); Cal-Am; 22CV004063*

This pending lawsuit incorporates multiple actions by Petitioners City of Marina, the Marina Coast Water District (MCWD), the MCWD Groundwater Sustainability Agency and MPWMD that collectively challenge CCC issuance of a Coastal Development Permit to Cal-Am to grant conditioned approval of Cal-Am's proposed Desalination Project. Cal-Am is a direct party as a real party in interest to this proceeding.

A trial on the merits is to be held on December 9, 2024 before Judge Wills in Department 15 of the Superior Court.

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5 – Matters Pending before the California Public Utilities Commission (CPUC) Actions pertaining to the Cal-Am Water System

The following actions are separate pending proceedings in which MPWMD is involved due to their impact on the Monterey area or upon the Cal-Am water system.

5.a A.21-11-024 Cal-Am Amended Water Purchase Agreement

This action deals with Cal-Am's request to purchase water from the Pure Water Replenishment Project and its expansion.

Earlier phases of this case dealt primarily with Cal-Am's request that the CPUC authorize the Company to enter into the Amended and Restated Water Purchase Agreement for Pure Water Expansion. The most recent phase has addressed the need to update water supply and water demand calculations related to the Cal-Am system.

Phase 2 briefs have been filed by all parties. It is not clear when a Proposed Decision will be issued by the assigned ALJ or when the matter may be submitted for action by the full Commission. An Order Extending Statutory Deadline to 12/31/2024 was published 7/16/2024.

5.b A.22-07-001 Cal-Am 2022 General Rate Case (GRC)

This action deals with Cal-Am triennial request that the CPUC approve both rates and charges, and changes to the Cal-Am operating system for a three-year rate cycle. The evidentiary phase of the case has been concluded. ALJ Rambo conducted the evidentiary hearing. The case has been reassigned effective 4/22/2024 from Commissioner Genevieve Shiroma to Commissioner Karen Douglas because the former Commissioner left the Commission.

A proposed decision was issued by the ALJ that partially accepts and partially rejects the partial proposed settlement submitted by Cal-Am and the Public Advocates Office.

Comments on the PD have been submitted by all parties. Commission action on the Proposed Decision is expected later this calendar year. An Order Extending Statutory Deadline to March 30, 2025, was received 8/30/2024.

Comments on the PD have been submitted by all parties. However, two additional large water utilities, Golden State Water Company and California Water Service Company, have held ex parte meetings with Commissioners or their advisors to challenge the PD and to support Cal-Am's request for full decoupling (WRAM surcharges). Golden State has been granted oral argument on December 2, 2024, before the Commission. Therefore, Commission action on the Cal-Am Proposed Decision is not expected until the Commission decides the WRAM issue. An Order Extending Statutory Deadline to March 30, 2025, was received 8/30/2024.

5.c R.22-04-003 CPUC Acquisition Rulemaking

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This action deals with CPUC Rulemaking. It impacts statewide public utility systems and has particular impact on the Cal-Am system. The scope of the proceeding is to propose rules to provide a framework for Public Water System Investment and Consolidation. The effect of these rules may promote or discourage transfer of local costs which would impose subsidies of local costs to non-local systems. The scope of these regulations may affect purchase prices for distressed assets and impose subsidies on local ratepayers.

It is not clear when a Proposed Decision will be issued by the assigned ALJ or when the matter may be submitted for consideration by the full Commission. On Sept 12, 2024 an Order extended the Statutory Deadline to March 30, 2025.

In addition to pending matters of active litigation referenced above, two matters of threatened litigation exist. as referenced below.

6 – Cal-Am v. MPWMD and Monterey One Water (action threatened by not yet filed)

By letter, Cal-Am threatened to file a breach of contract action relating to the Aquifer Storage & Recovery (ASR) Agreement among the parties. The dispute relates to the status of ASR Well.

The parties continue to cooperatively resolve their concerns and have entered into seven consecutive agreements to toll (extend) filing deadlines and facilitate their ability to reach a mutually acceptable settlement.

Cal-Am’s most recent comment states it “has been working diligently to address both extraction and injection concerns relating to ASR-04. Due to a variety of technical and several DDW-related procedural issues we now believe that this will not be fully resolved for several months and perhaps up to a year.”

7 –MPWMD v. SWRCB. Case No. 1-10-CV-163328 (Santa Clara County Superior Court) 10/27/2009.

On July 24, 2024, an attorney for the Sierra Club, Larry Silver, sent an email advising they will be retaining counsel to reactivate a claim for attorney’s fees related to the above lawsuit This Litigation Report revises and amends prior characterizations of the attorney’s claim submitted by Mr. Silver, based on an October email he sent on behalf of the Sierra Club.

The MPWMD Complaint asserted four causes of action against the SWRCB in this case - 1-10-CV-163328. (Venue for this case, originally filed in Monterey County, had been transferred from Monterey to Santa Clara County.) The District obtained a stay of the SWRCB CDO on November 6 2009; The remained in effect until November 4, 2010. The Santa Clara County Superior Court case remains pending, and has not been dismissed by the District or Cal-Am. The Sierra Club is an intervenor in this case.

Sierra Club filed a Motion for Attorneys' Fees in 2012. In 2014 the Sixth District Court of Appeal remanded the Sierra Club appeal back to the Superior Court, holding that Sierra Club was not precluded from filing a Motion for Fees once there was a final judgement in the case. Mr. Silver asserts the Sierra Club will seek attorneys' fees in MPWMD v. SWRCB,

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In 2012 the Sierra Club filed a Motion for Attorney's Fees then seeking a total of \$256,934 for time spent during the administrative hearing held in 2008 that preceded the 2009 CDO and time spent opposing the stay obtained by the District, as well as other time alleged to have been spent associated with this matter. The Sierra Club alleged charges to be paid by Cal-Am then related to 209.35 hours; Charges to be paid by MPWMD: totaled 45.40 hours; and additional time of 167.5 hours was to be shared by both Cal-Am and MPWMD. The District timely filed Opposition to the Sierra Club Motion for Attorneys' Fees.

The extent of any changes the Sierra Club may make to its 2012 demand is not known.

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