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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN**

Case No. _____

COALITION OF SENSIBLE
TAXPAYERS,

DOUG KELLY,

GLORIA RASHTI,

MARI ROBINSON,

ROBERT ROSENBLUTH,

PETITIONERS/PLAINTIFFS

-vs.-

MARIN MUNICIPAL WATER
DISTRICT, AND THE BOARD OF
DIRECTORS OF THE MARIN
MUNICIPAL WATER DISTRICT
SOLELY IN THEIR
REPRESENTATIVE CAPACITIES,
AND

DOES 1 THROUGH 100,

RESPONDENTS/DEFENDANTS

**PETITIONS FOR WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

**A. Writ of Mandate (CCP §1085) – to enforce CA
Const. Art. 13D, §6(b)(1): fee revenues greater
than funds required to provide property related
service.**

**B. Writ of Mandate (CCP §1085) – to enforce CA
Const. Art. 13D, §6(b)(3): fees greater than the
proportional cost of service to each parcel.**

**C. Writ of Mandate (CCP §1085) – to enforce CA
Const. Art. 13D, §6(b)(5): fees charged for general
governmental services.**

**D. Writ of Mandate (CCP §1085) - to enforce CA
Const. Art. 13D, §6: fees charged without legal or
statutory authorization.**

**E. Writ of Mandate (CCP §1085) – to enforce CA
Const. Art. 13D, §6(c): failure to conduct elections.**

**F. Writ of Mandate (CCP §1085) – to enforce CA
Const. Art. 13D, §6(a): failure to follow mandated
procedures for fee adoption.**

**G. Writ of Mandate (CCP §1085) - to enforce CA
Gov. Code §66013 and Const. Art. 13D, §6: failure
to comply with Gov. Code §66013, and failure to
account for capacity charge revenues in fees.**

**H. Writ of Mandate (CCP §1085)- fire hazard and
water waste (CA Const. Art.10 §2).**

Claim For Declaratory and Injunctive Relief.

I. THE PARTIES

1. Petitioner / Plaintiff (hereafter contracted to “Petitioner(s)”) Coalition Of Sensible Taxpayers, aka “CO\$T” and referenced herein by such acronym, is a California domestic nonprofit corporation representing the interests of Marin County, CA taxpayers and essential service ratepayers. CO\$T’s network of volunteers and supporters live throughout Marin County, and most are within the boundaries of the Respondent / Defendant (hereafter just “Respondent”) Marin Municipal Water District, aka “MMWD” or simply the “District,” and said participants in CO\$T are water customers of MMWD. CO\$T is a non-partisan organization with the mission to: 1) Keep local taxes and fees on housing and basic services affordable; 2) Encourage officials to prioritize spending on the uses most important to taxpayers; 3) Improve transparency and fiscal responsibility at local agencies and districts; 4) Educate taxpayers about the cost of their local taxes and fees; 5) Urge that tax measures be fair, equitable, and approved by those who will be paying.

2. Petitioner Gloria Rashti is an individual living in a residence of which she is a legal owner, located in Mill Valley, CA, and she is a water service customer of Respondent MMWD. The water service to Petitioner Rashti’s residence passes through a 1” size meter. Her residence does not have fire suppression sprinklers installed. Her water meter was not installed in recent years, she has no knowledge of there being any specific purposes for the choice of size of the water meter other than the convenience of the builder and the past practices of MMWD allowing such meters, and for past years and continuing through the present she is an extremely low water user below the average usage of the District generally and the average use of the local service area where her residence is located. Petitioner Rashti has been and will be affected as a water service customer by the increased water rates adopted by MMWD in Ordinance No. 442 (and as subsequently modified) which became effective July 1, 2019.

3. Petitioner Doug Kelly is an individual living in a residence of which he is a renter, located in San Anselmo, CA, and he is a water service customer of Respondent MMWD. The water service to Petitioner Kelly’s residence passes through a 5/8” size meter. His residence

1 does not have fire suppression sprinklers installed. His water meter was not installed in recent
2 years, he has no knowledge of there being any specific purposes for the choice of size of the
3 water meter other than the convenience of the builder and the past practices of MMWD
4 allowing such meters, and for past years and continuing through the present he is a low water
5 user below the average usage of the District generally. Petitioner Kelly has been and will be
6 affected as a water service customer by the increased water rates adopted by MMWD in
7 Ordinance No. 442 (and as subsequently modified) which became effective July 1, 2019.

8 4. Petitioner Mari Robinson is an individual living in a residence of which she is a legal
9 owner, located in Mill Valley, CA, and she is a water service customer of Respondent MMWD
10 (with the account having been set up in the name of her husband Richard Robinson). The
11 water service to Petitioner Robinson's residence passes through a 1" size meter. Her residence
12 does not have fire suppression sprinklers installed. Her water meter was not installed in recent
13 years, she has no knowledge of there being any specific purposes for the choice of size of the
14 water meter other than the convenience of the builder and the past practices of MMWD
15 allowing such meters. Petitioner Robinson has been and will be affected as a water service
16 customer by the increased water rates adopted by MMWD in Ordinance No. 442 (and as
17 subsequently modified) which became effective July 1, 2019.

18 5. Petitioner Robert Rosenbluth is an individual living in a residence of which he is a
19 legal owner, located in Tiburon, CA, and he is a water service customer of Respondent
20 MMWD. The water service to Petitioner Rosenbluth's residence passes through a 1½" size
21 meter. His residence does have fire suppression sprinklers installed. His water meter was not
22 installed in recent years, he has no knowledge of there being any specific purposes for the
23 specific choice of the 1½" size of the water meter other than the convenience of the builder and
24 the past practices of MMWD allowing such meters; he is aware that the meter should be 1" in
25 size to allow for flows to support the fire sprinkler system. For past years and continuing
26 through the present he is an extremely low water user below the average usage of the District
27 generally and the average use of the local service area where his residence is located. If not for
28 the need to have a meter at least 1" in size for fire sprinkler support, his water use would be

1 more than adequately satisfied by a 5/8" meter. Petitioner Rosenbluth has been and will be
2 affected as a water service customer by the increased water rates adopted by MMWD in
3 Ordinance No. 442 (and as subsequently modified) which became effective July 1, 2019.

4 6. Respondent/Defendant Marin Municipal Water District is a California Municipal
5 Water Agency, duly established and existing as a local agency under California statutory law,
6 governed by Division 20 of the California Water Code and "Proposition 218" (adding Articles
7 13C and 13D to the California Constitution), among other provisions of California law.
8 Respondents BOARD OF DIRECTORS OF THE MARIN MUNICIPAL WATER DISTRICT are
9 named herein only in their representative capacities as the governing legislative body of
10 Respondent MMWD, so as to make the BOARD subject to the jurisdiction and power of this
11 Court to provide affirmative relief as to Respondent MMWD as Petitioners have prayed for
12 herein.

13 7. Petitioners are ignorant of the true names and capacities of Respondents/Defendants
14 named herein as "DOES 1 THROUGH 100," inclusive, and therefore sues them by such
15 fictitious names. Petitioners will amend this complaint to allege their true names and
16 capacities when ascertained. Petitioners are informed and believe and thereon allege that Does
17 1 through 100 are public officials (both elected and non-elected), officers, employees, and/or
18 agents of the specifically named Respondents/Defendants and in doing the things hereinafter
19 mentioned were acting within the course and scope of their authority as such officials, officers,
20 employees, and/or agents with the permission and consent of their codefendants. Petitioners
21 are informed and believe and thereon allege that each of the fictitiously named
22 Respondents/Defendants is responsible in some manner for the occurrences herein alleged,
23 the Constitutional and statutory violations alleged by Petitioners, and is responsible for
24 providing effective future relief through the issuance of a judgment, injunction, and/or writ of
25 mandate.

26 **II. INTRODUCTION, NATURE OF CLAIMS PRESENTED, RELIEF SOUGHT.**

27 **INTRODUCTION**

28

8. This Petition seeks as primary relief a Judgment and issuance of a final Peremptory Writ of Mandate invalidating the District's recent attempted adoption of a new "Capital Maintenance Fee" (referred to herein as the "CMF") and a newly increased "Watershed Management Fee" (referred to herein as the "WMF") and prohibiting all collections of said fees. The thoroughly unlawful and incompetent adoption of these fees by the Marin Municipal Water District has raised numerous violations of the legal rights established for payers of property-related fees in Articles 13C and 13D of the California Constitution ("Proposition 218"); the constitutional violations are compounded by further violations of California statutory and common law.

9. The most prominent claim is that MMWD has seized upon “meter size” as a seriously flawed methodology for charging both the CMF and the WMF, which substantially charges more than the cost of providing service for residential water users, and charges more than the proportional cost of service to the parcels. While property owners across the whole spectrum of usage are overcharged, the most egregious examples occur with property owners who happen to have 1” or 1 ½” meters. The obvious inequity of charging by meter size caused the District to adopt unlawful “patches” to the flawed fees —only underscoring their primary illegality.

10. Close examination reveals even more serious legal deficiencies in the CMF and WMF, each of which need to be corrected by this Court so that the District and fee payers may move forward in accordance with the law. The general nature and legal headings of Petitioner's claims are listed below.

NATURE AND HEADINGS OF PETITIONER'S CLAIMS

A. Revenues derived from the fee exceed the funds required to provide the property related service – CMF and WMF: Art. 13D, §6(b)(1).

B. Charges are greater than the proportional cost of service attributable to the parcel – CMF and WMF: Art. 13D, §6(b)(3).

- 1 **C. Charges imposed for general governmental services** – CMF and WMF: Art.13D, §6(b)(5).
2 **D. Lack of statutory authority and agency approvals for charges** – WMF and CMF.
3 **E. Failure to conduct elections** – CMF and WMF. Art. 13 D, §6(c).
4 **F. Failure to follow mandated procedures for fee adoption** – CMF and WMF. Art. 13D, §6(a).
5 **G. Breach of mandatory statutory duties under Gov. Code §66013(c)(d)** - CMF.
6 **H. Increased fire hazard and incentivizing water waste** – CMF and WMF.

7
8 **RELIEF SOUGHT**

9 **11. Alternative Writ, Followed By Peremptory Writ After Hearing.** After service of this
10 Petition and appearance in the matter by Respondents, Petitioners will by noticed motion seek
11 an Alternative Writ of Mandate for an order to show cause at a final hearing for a Peremptory
12 Writ of Mandate. The Alternative Writ and an expedited hearing for a Peremptory Writ will
13 be sought on the grounds that the invalid CMF and WMF fees are being imposed from July 1,
14 2019 forward on District fee payers at a combined burden in excess of \$22M per year, for
15 which there is no adequate or immediate remedy that gives Petitioners or other fee payers
16 adequate relief as to ongoing payments of fees, and which creates fiscal instability for a District
17 intent on relying upon unlawful sources of revenue for over 40% of its budgeted operations.

18 **12. Declaratory Relief.** The complaint herein seeks alternative declaratory relief as to all
19 issues raised which are not fully or adequately adjudicated through a Peremptory Writ, if any.

20 **13. Private Attorney General/Other.** This proceeding is brought by Petitioners in the
21 public interest, to vindicate important public rights, and for the broad benefit of the payers of
22 the property related fees challenged in this proceeding. The relief sought by Petitioners in this
23 matter will not provide economic or pecuniary benefit to Petitioners sufficient to justify or
24 support the costs and attorneys' fees incurred for institution and prosecution of this
25 proceeding to conclusion. Upon successful conclusion of this legal proceeding, Petitioners will
26 request a full award of attorneys' fees and costs under the "private attorney general statute"
27 CCP §1021.5, or under the "common fund/substantial benefit" doctrine, or upon any such
28 grounds as the law supports and the court deems appropriate.

III. BACKGROUND AND FACTUAL ALLEGATIONS IN SUPPORT OF CLAIMS

A.1. Overcharges To Residential Parcel Owners With 1" and 1½" Meters

14. The Marin Municipal Water District ("MMWD") was formed in 1912 and encompasses an approximate 148 square mile jurisdictional boundary. The jurisdictional boundary of water service provided by MMWD includes 10 of the 11 Cities and Towns in Marin County along with 11 census designated unincorporated communities as well as San Quentin State Prison. A map showing the District boundaries and the 10 included incorporated Cities and Towns is attached as "Ex.1" and incorporated by reference herein [map is Fig.2-1, p.2-2, from the MMWD "Water Resources Plan 2040" RMC & Woodward & Currant Consultants, March 2017, hereafter referred to as the "WRP 2040"].

15. MMWD is the first and the **oldest** municipal water district in California, formed under and still governed by the Municipal Water District Law of 1911, Water Code §71000 et.seq. Over the course of about 107 years the district has grown to provide water service to a population of about 190,000 people. (See MMWD website, "About.") The District has about 61,800 active service connections, of which 55,700 are residential and 6,100 are non-residential (commercial, institutional, irrigation). Attached as "Ex. 2," and incorporated by reference herein, is an MMWD chart on meter sizes labeled "Capital Maintenance Fee (including fire and fuels management)" used in the District and projected CMF revenues; this chart was displayed by MMWD at a May 15, 2019 public outreach meeting and used in subsequent meetings. The District considers the "Average Single-Family Residential Customer" to have a 5/8" meter, as indicated by the chart also used by the District on May 15, 2019 and subsequently, labeled "Impact to Average Customer" in respect to the prospective new and increased fees (see "Ex.3" incorporated by reference herein). Because a 5/8" meter (the smallest size) is normally adequate, virtually all of the District's residential meters would be accounted for among the meters at 1½" or smaller, which takes in 59,683 meter connections and 98.55% of all meters (see "Ex. 2"). However, if (see "Ex. 2") all of the 5/8" meters (41,227) and all of the ¾" meters

(3,404) are “residential” then at least **11,069 meters** (55,700 residential service connections minus [41,227+3,404 meters]) of the residential service connections must be on meters that are **1” or 1½” in size.**

16. Historically and currently when a meter installation is made in MMWD it is the property owner/applicant who requests and determines the particular meter size that will be connected to the MMWD distribution system. MMWD does not define the size of the water meter to be installed. (See Ex. 4, p.2) MMWD is unusual in that it has never had a customer rate or charge based on meter-size until it adopted a “service charge” for administrative costs in 1993. Until that time the water rates charged by MMWD had always been a basic “commodity charge” based on quantity of water consumed; and the residential “connection fee” (aka “capacity charge”) to pay for capital infrastructure and capacity was and still is based on **average annual water use** where the property is located in the pertinent local “service area” in the District water system. **The MMWD program of capacity charges based on localized service areas of average annual usage is finely calibrated to proportional demands on the MMWD system; it accounts for the high degree of variation among MMWD residential customers/parcels in a diverse jurisdiction; it is data intensive and labor intensive in that it requires regular annual review and potential adjustment by the District; this type of capacity charge program is rare among California water agencies (Petitioners are not aware of any other water agency that uses this approach in the Bay Area); and most important—as alleged by Petitioners herein—it is fair, equitable and proportional. This is an established monetary investment that has already been made by over 60,000 residential water users in MMWD; it is the present fact and reality, not an abstraction. Legally the capacity charge “buy-in” of allocable infrastructure value for individual parcel water connections provides the “base” for any additional charge to allocate the amount/% of costs to each individual parcel owner for “maintenance” of the infrastructure.**

17. MMWD’s aforescribed capacity charge scaled to average annual water usage is unusual in that it costs the customer no more a large residential meter than a small one. It essentially makes the meter size irrelevant. From 1912 to 1993 the financial consequences to a

1 residential builder or residential property owner from installing a large size water meter (1½"
2 for example) as compared to the minimum size of 5/8" was the marginal cost of the plumbing
3 hardware; fees or charges by the District were not a factor in the selection of meter size for that
4 span of over 80 years. Beginning in 1993 there was a relatively small financial consequence
5 from the bi-monthly water "service charge" scaled to meter size. Then beginning in January of
6 2016 the District started collecting a bi-monthly "Watershed Management Fee" ("WMF")
7 scaled to meter size that increased the impact of meter size. And the dramatic change that
8 occurred effective July 1, 2019 is that the District simultaneously increased the WMF **and**
9 pulled the capital maintenance expense out of its water usage rates and began charging those
10 expenses as an independent fixed bi-monthly fee – a "Capital Maintenance Fee" or "CMF"--
11 based on meter size; to the knowledge of Petitioners **MMWD is unique** among all California
12 water districts in charging a bi-monthly or monthly recurring fixed capital maintenance fee
13 based on meter size. Nonetheless the meter sizes prevalent among the existing residential
14 customer base of MMWD is a reflection of the District's 100+ year history with little or no
15 financial consequence from installing a larger 1" or 1½" meter. Over this time MMWD has
16 accumulated over 11,000 residential 1" and 1 ½" meter connections, equivalent to 20% of its
17 residential connections.

18 18. MMWD's residential capacity charges (the fee for initial "buy-in" for the property
19 owner's proportional share of the water infrastructure) and MMWD's bi-monthly recurring
20 fixed meter-size-based capital maintenance fee are very different from what one sees in the
21 water districts and cities that MMWD uses as a basis for comparison to its own operations in
22 justifying its approach. MMWD compares itself to (see Ex. 4, p.1, April 16, 2019 Board
23 Meeting): Water Districts – Contra Costa Water, Dublin San Ramon, NMWD, EBMUD,
24 Alameda County Water; and Cities – Palo Alto, Hayward, Mountain View, Los Altos,
25 Livermore, Santa Clara, San Jose, SFPUC. None of the comparison water district or cities
26 utilize MMWD's methodology for capacity charges based on local service area average annual
27 water usage; none of the comparison water district or cities charge a bi-monthly or monthly
28 recurring fixed meter-size-based capital maintenance fee. The typical one-time residential

1 capacity charge methodology used in the comparison water agencies is based on meter size,
2 which has a profound economic impact on the initial choice of the size of the meter
3 installation. For example, in EBMUD (East Bay Municipal Utility District) the capacity charge
4 for a ¾" meter (in Region 1) is \$18,100 compared to the charge for a 1½" meter at \$60,460. And
5 in Contra Costa Water the capacity charge for a 5/8" meter is \$20,978 compared to the charge
6 for a 1½" meter at \$104,890. Whereas in MMWD there is no difference in the capacity charge
7 for different meter sizes, because the MMWD methodology is tied to local service area average
8 annual water usage. Petitioners allege that the substantial percentage --20%-- of residential
9 water users in MMWD that have 1" and 1½" meters is in part the consequence of MMWD's
10 usage of a completely different methodology for capacity charges than the method used by
11 comparison water agencies in the region.

12 19. From February through July of 2019 (and continuing) MMWD has made repeated
13 public communications to its customers such as that found in Ex. 4, p.2, comparing the Capital
14 Maintenance Fee (CMF) to fees charged by other water agencies in California, while claiming
15 that such meter-based fees are commonplace and the "industry standard." In fact (to the
16 knowledge and belief of Petitioners): no other water agency in the State of California charges a
17 stand-alone recurring "Capital Maintenance Fee." There is no "industry standard" among
18 water agencies for charging a recurring "Capital Maintenance Fee"; to the contrary, if water
19 industry "practice" is considered equivalent to "industry standard" (where 99.9% of all water
20 agencies follow the same practice), then the standard would be to charge customers for capital
21 maintenance in the water rates based on the amount of water usage. Though a "capacity
22 charge" (see Gov. Code §66013) for the initial buy-in of a parcel owner's proportionate share of
23 the capital infrastructure is similar to a "Capital Maintenance Fee" in that both relate to capital
24 infrastructure (the first is buy-in and the latter is maintenance), a capacity charge **is not** subject
25 to Prop 218 whereas the recurring Capital Maintenance Fee levied against the identified
26 property owner customers of the District **is** subject to the stricter legal standards of Prop 218.
27 In MMWD any recurring charge for "maintenance" of capital infrastructure is legally required
28 by Prop 218 to be based on water usage on two overlapping grounds: (1) the amount of capital

1 infrastructure allocated to an individual parcel owner in the water-usage based capacity
2 charge calculation provides the proportional basis for allocation of “maintenance” expense for
3 that portion of the infrastructure, and (2) “water usage” provides the most accurate proxy for
4 determining the degree to which an individual water user creates “wear and tear” on a water
5 system, and thus is the accurate method of measuring expense for maintenance—as is the
6 practice in 99.9% of all water agencies. In its public presentations MMWD ignored these facts
7 and disregarded the law. Petitioners allege that MMWD repeatedly and persistently lied to
8 and deceived its customers in making false representations that the proposed Capital
9 Maintenance is in accordance with “industry standards” and is comparable to fees charged by
10 other water agencies either in the region or anywhere in the State of California.

11 20. Though there is no hard age-distribution data on meter installations in MMWD, it is
12 clear that meter installations occurred gradually and concurrently with population growth in
13 the MMWD jurisdiction over the last 107 years as housing construction occurred; and it is to be
14 assumed that the meter installations were lawful and authorized at the time of installation and
15 connection to the MMWD distribution system, as MMWD was in control of the water system
16 connection process. The over 11,000 large diameter residential meters were installed over a
17 stretch of over 100 years largely because MMWD’s policies explicitly allowed it, and there was
18 no significant financial consequence to builders/property owners. An important fact is that the
19 historical proliferation of large residential meters did not result in increased water usage, and
20 in fact the committed water conservation efforts by water users in the MMWD jurisdiction in
21 the last twenty years have significantly reduced water usage/demand. (See MMWD 2015
22 Urban Water Management Plan, p. 43, Figure 5-4.).

23 21. Then almost ten years ago a new factor emerged. The CA Building and Fire Codes
24 changed in 2010 to mandate fire sprinkler systems in all new residential home construction
25 and significant remodels. The water “fire flow” requirements for residential sprinklers force
26 the installation of meters that are at least 1” in size, and in some cases 1½”, to provide the
27 instantaneous volumes of water residential sprinkler systems require. Of the 11,069 1” & 1½”
28 diameter residential meters in MMWD, the District has identified 3,400 of those meters on

1 residential properties mandated by new code requirements to be equipped with residential
2 fire suppression sprinklers. (See Powerpoint from the April 16, 2019 Board meeting, attached
3 hereto as "Ex. 4" and incorporated by reference herein.) In some instances 1" & 1½" meters
4 were installed due to low system water pressure (the District has not identified the number of
5 those meters). After accounting for the 3,400 large residential meters tied to fire suppression
6 sprinklers, the rest of the approximately 11,609 large meters – or about 8,209 1" and 1½"
7 meters are "historical" meters, previously allowed by the District, with no culpability
8 attributable to the parcel owner.

9 22. MMWD acknowledges that some of the 1" and 1½" meters were installed due to low
10 distribution system pressure serving particular parcels. Petitioners do not know of any data,
11 and it is doubted that MMWD has data, quantifying the exact number of parcels with large
12 meters due to low system pressure.

13 23. Both the raw numbers and the percentages of the residential connections with 1" &
14 1½" meters will increase rapidly in the near future. In addition to the existing code
15 requirement for residential fire suppression sprinklers in newly constructed houses,
16 municipalities and counties are increasingly requiring sprinklers as a condition of any
17 significant residential remodel permit, in addition to other incentives for sprinklers. MMWD
18 has 10 Cities and Towns plus County-governed unincorporated areas in its service jurisdiction.
19 According to the "2016 Municipal Service Review by the Marin County Local Agency
20 Formation Commission" [hereafter "2016 LAFCO MSR"] at p.4-113, 73.8% of the residential
21 units in the MMWD jurisdiction are within the 10 Cities and Towns and 26.2% are in the
22 unincorporated area under County jurisdiction. In addition to the eleven jurisdictions'
23 regulations promoting the installation of additional residential fire suppression systems, the
24 Association of Marin County Fire Chiefs' policy strongly encourages and incentivizes water
25 meter upsizing (from 5/8" to 1"-1½") to accommodate water sprinkler system installation.
26 Attached as "Ex. 5," and incorporated by reference herein, is a true copy of the June 18, 2019
27 letter from the Marin County Fire Chiefs Association to MMWD objecting to adoption of new
28 and increased fees that would make it more expensive for homeowners to upsize to sprinkler-

1 accommodating larger meters and/or pay higher bimonthly fees MMWD charges for those
2 larger meters. The Fire Chiefs also object to MMWD's policy of encouraging meter downsizing
3 to 5/8" in MMWD's promotional literature.

4 24. A further push toward conversion of existing homes to sprinklers is being made by
5 the insurance industry. Fire insurance companies already offer general discounts up to 35% for
6 houses with sprinkler installation (see homefiresprinkler.org). Fire suppression sprinklers,
7 both interior and exterior, are known to mitigate wildfire risk (see FEMA, Fire Sprinklers –
8 Home Builder's Guide to Construction in Wildfire Zones, Technical Fact Sheet No. 15 (at
9 [https://www.fema.gov/media-library-data/20130726-1651-](https://www.fema.gov/media-library-data/20130726-1651-204903237/fema_p_737_fs_15.pdf)
10 [204903237/fema_p_737_fs_15.pdf](https://www.fema.gov/media-library-data/20130726-1651-204903237/fema_p_737_fs_15.pdf)). Homeowners and fire insurance policies in California high
11 fire risk areas are seeing premium increases, non-renewals, and cancellations based on new
12 and evolving fire-risk underwriting models (see Ledger Dispatch newspaper, "Local
13 Homeowners Insurance Policies Being Canceled," Jack Mitchel, March 13, 2019, [Amador &
14 Calaveras Co.] [http://www.ledger.news/news/local_news/local-homeowners-insurance-](http://www.ledger.news/news/local_news/local-homeowners-insurance-policies-being-canceled/article_aa70e942-4434-11e9-8fa2-db06e21f3682.html)
15 [policies-being-canceled/article_aa70e942-4434-11e9-8fa2-db06e21f3682.html](http://www.ledger.news/news/local_news/local-homeowners-insurance-policies-being-canceled/article_aa70e942-4434-11e9-8fa2-db06e21f3682.html)), which in some
16 instances can be mitigated by fire defense measures including sprinklers. Whether it is
17 premium based incentives or threat of cancellation, insurance carriers (in addition to local
18 agencies) are driving future large scale conversion of existing homes in the MMWD
19 jurisdiction and elsewhere to add sprinkler systems requiring 1" or larger meters. At the April
20 16, 2019 MMWD Board meeting a District customer who installed a 1½" meter objected to the
21 high meter-based fees because she was forced by her insurance company to put in the meter
22 for fire suppression sprinklers, and while her low water usage is no greater than before and
23 exhibits exemplary water conservation efforts, she would be subjected to unfair extremely
24 high meter-based charges on a new proposed "Capital Maintenance Fee" by changing from a
25 5/8" meter (\$163.50 annually) to a 1½" meter (\$817.47 annually). The MMWD Board agreed
26 that the high meter-based charges she faced are "inequitable," and collectively the Board
27 assured her they were working on a special "process" or a "carve-out" that would reduce her
28 potential fees and the fees of thousands of water customers in the same circumstances to a

1 level that is fair. The Board acknowledged that many more residential customers will be
2 transitioning to 1" and 1½" meters for fire suppression sprinklers, and the General Manager
3 opined that an insurance requirement to retrofit houses with fire suppression sprinklers will
4 accelerate and "dramatically affect this issue" in the District.

5 25. MMWD has calculated the average annual water use for a single family home –
6 **regardless of meter size** – to be 0.28 AFY (Acre Feet per Year), and similarly the median water
7 use for a single family home to be 0.21 AFY. [See "MMWD, Water Connection Fee Study
8 FINAL REPORT," AUGUST 2, 2018, The Reed Group, Inc. with Raftellis Financial Consultants,
9 Inc., at p.12, fn.10.; hereafter this REPORT is referred to simply as the "Reed Report."] These
10 quantities of water are easily served by a 5/8" meter, and in fact 68% of the District's meters
11 are 5/8" in size (see "Ex. 2") which serve the average and median water volumes to residential
12 customers. The relatively low water usage by MMWD residential water customers of all meter
13 sizes is the consequence of both (a) water conservation efforts of MMWD in the past 20 years
14 and continuing into the future, and (b) CA State laws implementing increasingly stringent
15 water conservation standards. These conservation measures are described in the MMWD 2015
16 Urban Water Management Plan Water Demand Analysis and Water Conservation Measures
17 Update – FINAL, July 1, 2015, MADDAUS WATER MANAGEMENT, INC. (hereafter referred
18 to simply as the MMWD "2015 UWMP"). The District on its own is committed to
19 implementing even more aggressive conservation measures as it goes forward (2015 UWMP at
20 p.38 et.seq.). CA has enacted multiple pieces of legislation ratcheting down the volumetric
21 targets for water conservation while demanding greater water efficiency / conservation in
22 residential uses: (•) SB X7-7 "The Water Conservation Act of 2009" aka "20% by 2020"
23 demands a 20% reduction of per capita water use by the year 2020 (see 2015 UWMP at p.23);
24 (•) AB 715 amends the Plumbing Code and requires high efficiency toilets and urinals as of
25 2014 (see 2015 UWMP at p.6); (•) SB 407 also amends the Plumbing Code and applies high
26 efficiency fixture standards by 2017 for single family residential to both construction and
27 replacements (see 2015 UWMP at p.6); (•) the "CALGreen Building Code" requirements
28 effective 2011 for all new construction impose mandatory requirements for 20% water savings

below baseline on all indoor fixtures (see 2015 UWMP at p.46); and (•) the most stringent and more recent (enacted 2018, to be implemented 2020 and beyond) conservation mandates are in AB 1668 and SB 606 mandating indoor water usage standards of 55 gpcd until 2025, then further reduced to 52.5 gpcd till 2030, then reduced to 50 gpcd thereafter (see Water Code §10609.4). These State law residential water conservation requirements make no allowance for residential meter size. The 2015 UWMP, which *preceded* the most stringent water conservation statutes, projects that the average per capita water use in MMWD (regardless of meter size) is projected to decline from a point slightly below the SB X7-7 target of 128 gpcd (“gallons per capita per day”) to about 112 gpcd by the year 2040. (See 2015 UWMP, at p.43, figure 5-4. “Water Conservation Program Savings Projections – SB X7-7 Target, GPCD.”)

26. The net effect of the 11,069 (and growing) 1” & 1½” residential meters established in MMWD without regard to ordinary water usage, combined with the water conservation programs and laws that constrain and reduce/incentivize ordinary residential water use to levels serviceable by the smallest meters, is that **there is no actual correlation between a residential water user’s demand on the MMWD system and the size of the water meter**, whether the meter is 5/8”, or ¾”, or 1” or 1½”.

27. On May 28, 2019 MMWD approved a new “Capital Maintenance Fee” or “CMF” at graduated rates based on meter size. MMWD also approved increasing all of its existing rates, including a “Watershed Management Fee” or “WMF” that is graduated based upon meter size. The MMWD Board issued it’s Prop 218 Notice for the new/increased rates in early April, 2019. A true copy of the Prop 218 Notice is attached hereto as “Ex. 6” and incorporated by reference herein. The Notice has the following tables for the proposed CMF (note that the CMF potentially increases each year by the ENR Construction Cost Index up to a maximum of 4% per year). →

Capital Maintenance Fee - Property Owners

\$/Meter Size Billed Annually on Property Tax Bill			
Meter Size	% of meters	Current	Annual Per Meter Charge*
5/8"	68.08%	-	\$163.50
3/4"	5.62%	-	245.25
1"	21.09%	-	408.74
1.5"	3.76%	-	817.47
2"	1.07%	-	1,307.95
3"	0.26%	-	2,861.14
4"	0.07%	-	5,150.05
6"	0.03%	-	11,444.54
8"	0.01%	-	19,619.21
10"	0.00%	-	31,063.75

95% of MMWD customers have meters 1" or smaller

** With annual increases/decreases benchmarked to ENR Construction Cost Index and capped at 4% increases per year.*

The CMF does not apply to dedicated private fire service lines.

and for the proposed increased WMF there are automatic 4% increases each year →

Bimonthly Watershed Management Fee (\$/Meter Size)					
Meter Size	Current	Proposed July 1			
		2019	2020	2021	2022
5/8"	\$9.78	\$10.29	\$10.71	\$11.14	\$11.59
3/4"	11.69	12.30	12.80	13.32	13.86
1"	15.50	16.30	16.96	17.64	18.35
1.5"	25.02	26.31	27.37	28.47	29.61
2"	36.45	38.32	39.86	41.46	43.12
3"	72.65	76.36	79.42	82.60	85.91
4"	125.99	132.42	137.72	143.23	148.96
6"	272.67	286.57	298.04	309.97	322.37
8"	463.17	486.77	506.25	526.50	547.56
10"	729.87	767.05	797.74	829.65	862.84

28. The amount of the CMF charge increases exponentially as the diameter of the Meter Size increases, because it corresponds to the measure of the relative hydraulic capacity of the meter to instantaneously deliver quantities of water. The chart below shows the capacity of increasing meter sizes to instantaneously deliver water in gallons per minute ("gpm").

Meter Size	Capacity (gpm)	Capacity Ratio
5/8"	20	1.00
3/4"	30	1.50
1"	50	2.50
1 1/2"	100	5.00
2"	160	8.00
3"	350	17.50
4"	630	31.50
6"	1,400	70.00
8"	2,400	120.00
10"	3,800	190.00

A 5/8" meter can deliver 20 gpm and is assigned a base value "Capacity Ratio" of "1.00." A 3/4" meter can instantaneously deliver 30 gpm, and is given a Capacity Ratio of 1.50, which is

merely 30 divided by the 20 gpm base value for a 5/8" meter. (See "MMWD Water Financial Plan and Rates," March 2019, Raftellis, at p.31; hereafter this study referred to as the "Raftellis Report.") Consequently the proposed rates for the CMF start at a calculated base value of \$163.50 (per year) for a 5/8" meter, then $1.50 \times \$163.50 = \245.25 for a 3/4" meter, then $2.50 \times \$163.50 = \408.74 for a 1" meter, then $5.00 \times \$163.50 = \817.47 for a 1 1/2" meter, and so on. All of these rates further increase up to 4% per annum for four years.

29. The WMF is slightly different from the CMF in that it was initially designed and adopted in 2016. It utilizes a hybrid approach whereby it collects the same type of escalating meter size charge for about half of the WMF, while the other component of the WMF is a flat per-water-meter charge. (See "MMWD Final Cost Of Service Study," May 2017, Corollo Engineers, at p.37-41; hereafter referred to as the "Corollo Study.") Consequently the WMF doesn't increase quite as rapidly as the CMF, but it has the same infirmity from reliance on the "capacity ratio" of meters to tier the charge.

30. The premise upon which the District relies for using meter size capacity to scale the CMF and WMF is that the instantaneous capacity of the meter supposedly represents a parcel owner's likely proportionate demand on the infrastructure of the overall water system to deliver water to that parcel. (See Raftellis Report at p.30.) The obvious and major flaw in the District's logic (and its rate design) is that for the 11,069 residential water users who have 1" or in some cases 1 1/2" meters—whether the size is by historical artifact, to power fire sprinklers, or to make up for low system water pressure—the size of the meter doesn't actually tie to residential usage. The average homeowner who purchases a house originally built 40 years ago with a 1" or 1 1/2" meter installation (when the cost of meters was not a significant consideration) is no more likely to put increased demand on the system than a 5/8" meter owner. The average owner of a house that has fire sprinklers and a 1" meter required to make them operate is statistically unlikely to ever need the capacity of that meter to drive the sprinklers, and otherwise uses water as would the normal 5/8" meter customer. And where low system water pressure necessitates the installation of a 1" or larger meter just for the parcel owner to receive adequate water pressure, it is the District that is at fault for failure to

maintain its system to health & safety pressure requirements, while the water customer remains an average user that would need no more than a 5/8 meter for regular water needs. **The unlawful result of the District's rate design and structure is that 11,069 parcel owner water users with 1" to 1½" meters are subjected to "excessive charges" –revenue to the District in excess of the cost of service-- at 2.50 to 5.00 times the 5/8" base rate for the CMF. And as to the WMF, the same water customers are overcharged at 1.58 to 2.55 times the 5/8" meter base rate.**

31. Many members of the public and representatives of Petitioners raised objections at public meetings of MMWD that the use of "meter size" was an inaccurate, excessive and disproportional method for charging a CMF and WMF. At various times in April and May of 2019 the District Board and General Manager acknowledged publicly that the use of "meter size" could result in excessive charges, especially in instances where meters were sized to allow for fire sprinklers or to compensate for low system water pressure. However, MMWD's official April Prop 218 Notice (see "Ex. 6") sent to all the property owners and setting a hearing for protests and consideration of adoption of fees for May 28, 2019 **makes no mention of any adjustment in fees or any mechanism to change fees that are overcharged.** That Prop 218 Notice was supposed to meet MMWD's constitutional requirement to fully inform MMWD's property owners of the proposed rates to so each individual property owner would know the **amount** to be paid by all classes of customers under the new rates. In public meetings prior to the May 28 hearing the Board discussed creating a "process" to reduce fees for those who are overcharged, but no decision was made on a "process" and the Board members by consensus eschewed creating a rule using objective criteria in favor of using *ad hoc* determinations on a case by case basis with no definitive standards.

32. On May 28, 2019 the MMWD Board held a hearing to consider protests to the proposed new and increased fees, and upon determining that insufficient protests had been submitted to prevent them from proceeding the Board adopted the new and increased fees in the form of MMWD Ordinance No. 442, a true copy of which is attached hereto as "Ex. 7" and incorporated by reference herein. Ordinance No. 442 adopts and imposes effective July 1, 2019

1 the new CMF and the increased WMF based upon meter size and at the rates indicated in the
2 official public Notice (Ex. 6). Available to the public only 3 business days before the day of
3 adoption of Ordinance No. 442 (when it was posted online) was the text included in Ordinance
4 No. 442 as the new §6.01.024 of the MMWD Code, approved May 28, 2019, which reads as
5 follows:

6 **6.01.23 Capital Maintenance Fee Adjustment for Upsized Residential Meters.** The
7 legal owner of a single-family residential property with a water meter that has been upsized
8 for non- consumption purposes (i.e., due to private fire suppression system and/or due to
low system pressure) may qualify for an adjustment to the annual Capital Maintenance Fee.

- 9
- 10 (a) Upon written request of the legal owner of a single-family property, through a
District supplied completed application form that is supported by documentation
11 that verifies that a meter was upsized for non-consumption purposes, the District
will review the documentation provided by the legal owner and determine whether
12 the documentation supports reducing the legal owner's Capital Maintenance Fee by
one meter size.
- 13
- 14 (b) If the District confirms that the property's minimum meter size (absent fire
suppression and low system pressure demand) is less than the property's current
15 meter size, the Capital Maintenance Fee for the property will be reduced
downward by one meter size.
- 16
- 17 (c) A written determination of whether a reduction is granted or denied shall be made
at the sole discretion of the General Manager or his or her designee and shall be
18 final as to the District but subject to judicial review under Code of Civil Procedure
Section 1094.5. In making the determination, the District will take into account the
19 minimum meter size required for the property without the fire suppression system
or low pressure demand.
- 20
- 21 (d) To ensure a consumer is in compliance with this section the District may perform a
water audit of any property receiving the Adjustment for Upsized Residential
22 Meters for non- consumption purposes.

23 33. As adopted §6.01.24: (•) Delegates to the General Manager (or his "designee")
24 complete authority to determine whether the amount of an excessive CMF charge should be
25 reduced, without standards or any mechanism to objectively decide whether the fee reduction
26 should be granted. (•) Shifts the burden of proof to the property owner to prove to the
27 Manager through "documentation" that an excessive fee should be reduced, in violation of
28

Article 13D §6(b)(5) placing the burden on the agency to demonstrate compliance with Prop 218. (•) Gives the General Manager (or his “designee”) “sole discretion” to grant or deny a fee reduction, with no right of appeal to the Board, and expressly relegates the fee payer to “judicial review under Code of Civil Procedure Section 1094.5” – i.e. administrative mandamus though there are no standards against which judicial review could determine whether there had been an abuse of discretion or failure of evidence. (•) Arbitrarily limits fee reductions to meters required for “fire suppression” and “low pressure demand” –effectively excluding over 90% of all overcharged CMFs on 1” and 1 ½” meters that exist merely by historical artifact. (•) Arbitrarily limits a fee reduction of the CMF to “one meter size”; so in a typical example of a 1” meter for fire sprinklers on a residential parcel that could receive adequate domestic supply through a 5/8” meter, the District General Manager (at his sole discretion) could reduce the fee, but is limited to that prescribed for a ¾” meter, a reduction from \$408.74 [1”] to \$245.25 [¾”] instead of the rational/logical amount of \$163 [5/8”]. [•] Arbitrarily limits a fee reduction application to the “legal owner” of the parcel, even though approximately 30% of the water users and account holders in MMWD are *tenants*; the District determined in Code §6.01.23(c) of Ordinance No. 442 that it would collect the CMF from standard water bills (inclusive of tenants) for 2 years through June 30, 2021, and then later switch to billing legal owners through the annual property tax statement (another decision revealed only in the text of Ord. 442 revealed 3 business days before adoption); this effectively cuts off any due process on rate reduction for tenant customers for 2 years. [•] The fee reduction provision is not “self executing,” which means that MMWD is deliberately overcharging a large segment of its customers, and then requires the overcharged fee payers to ask the District for reduction. [•] The WMF charges that are falsely inflated on 1” and 1½” meters have the same infirmities and grounds for reduction as would apply to the inflated CMF charges, but there is no provision in Ordinance No. 442 to consider reductions to the WMF for any individual fee payer.

34. For many weeks in advance of adopting deliberately excessive CMF and WMF charges on May 28, 2019 – fees scheduled to be effective July 1, 2019—the MMWD Board was

1 receiving complaints from local agencies, especially school districts, that the new and
2 increased fees would be financially burdensome. MMWD decided to address these concerns
3 *after* the rate hearing of May 28, 2019. On June 27, 2019, the Board of MMWD met and
4 adopted a significant new amendment, modification, and extension of the CMF, but did so in
5 the form of “Board Policy No. 52” rather than a formal amendment of Ordinance No. 442 that
6 created the CMF. True copies of Board Policy No. 52 and the introductory staff report are
7 attached hereto as “Ex. 8” and incorporated by reference herein. Policy No. 52 (effective
8 immediately on June 27 so as to beat the July 1, 2019 effective date of Ordinance No. 442) gives
9 the General Manager authority and unbridled discretion to grant “local public agencies” (an
10 undefined term) deferrals of the first 2 years of the CMF, with the deferral to last up to 2 years
11 –subject to extension for another 2 years if the agency demonstrates efforts to reduce the CMF
12 fee—coupled with a repayment plan to last no more than 5 years. The net effect is that local
13 public agencies could defer and stretch out repayment of the CMF for a period extending up to
14 9 years. No such payment accommodations are extended to private fee payers or single family
15 home owners. Instead, those who fail to pay on time are assessed an over 6% annual penalty
16 (\$3 plus 1% of the outstanding balance per bimonthly billing cycle (– per
17 [https://marinwater.org/DocumentCenter/View/3749/Bill-Insert---Understanding-Your-](https://marinwater.org/DocumentCenter/View/3749/Bill-Insert---Understanding-Your-Water-Bill-March-April-2016?bidId=)
18 [Water-Bill-March-April-2016?bidId=](https://marinwater.org/DocumentCenter/View/3749/Bill-Insert---Understanding-Your-Water-Bill-March-April-2016?bidId=)). Policy No. 52 created arbitrary and discriminatory rates
19 in violation of Water Code §71614.

20 35. An additional violation of Water Code §71614 arises from the fact that extremely
21 large residences and some institutional/commercial water customers (like schools, public
22 agencies, and businesses) that need higher volume fire suppression water utilize 2” or larger
23 separate “private fire service lines” that merely provide idle standby firefighting water
24 capacity if needed, and those “private fire service lines” are expressly 100% exempt from the
25 CMF for their idle standby firefighting water capacity (see Ex. 6, bottom p. 5). Residences with
26 1½” or 1” meters for fire suppression sprinklers have one water line, but that large diameter
27 water line also includes the same idle standby firefighting water capacity that exists solely for
28 fire suppression purposes. However MMWD does not provide a simple 100% express

1 exemption from the CMF for the additional firefighting water capacity in residential 1½" or 1"
2 meters and lines for fire suppression sprinklers; these residential customers are forced to apply
3 to the District Manager under new MMWD Code §6.01.024 and plead for a partial reduction of
4 their CMF fee by one meter size, with no assurance of success. Yet there is no difference in
5 kind, character, purpose, conditions of service, or classes of customers that would distinguish
6 between the firefighting water capacity in a fire service line and the firefighting water capacity
7 in a residential 1½" or 1" meters/lines for fire suppression sprinklers. MMWD's discriminatory
8 and disparate treatment of CMF rates/100% exemptions for "fire service lines" contrasted with
9 the MMWD Code §6.01.024 partial reduction application for residential 1½" and 1" meters for
10 fire suppression sprinklers, blatantly violates the mandate of Water Code §71614 requiring that
11 "rates shall be uniform throughout the district for like classes and conditions of service."

12 36. The concurrent effect for residential fee payers with 1" and 1½" meters who might
13 apply for the (already inadequate) reduction of the CMF allowed by MMWD code §6.01.23 is
14 functionally and legally equivalent to a fee increase, because the General Manager of the
15 District (who is free to act without standards) will be incentivized to deny any residential fee
16 reductions when CMF cash flow is constrained due to local public agency deferrals of
17 payments of their share of the CMF. The purpose of the CMF is to provide revenue to pay for
18 the annual CIP expenses (see "Ex. 6," p.). A shortfall caused by local agency fee deferrals
19 would make that revenue target difficult to meet if discretionary fee deferrals are given to
20 residential customers with 1" or larger meters.

21 22 **A.2. Overcharges Broadly To The Class of CMF Payers And The Class Of WMF Payers**

23 37. The CMF and WMF broadly overcharge the entire class of single-family residential
24 water users across all sizes of water meters. The water users in the MMWD jurisdiction are –
25 like Petitioners herein-- highly conscious of water conservation, and they intuitively/rightly
26 believe that their concerted efforts to use less water should simultaneously conserve water
27 resources collectively for the District, reduce their own bills, and reduce costs for the District.
28 Their understanding is both logical and borne out by the facts: The chart labeled "Table 2-2:

Projected Water usage” in the March 2019 Raftellis Report, at p. 10 (copy attached hereto as “Ex. 9” and incorporated by reference herein) shows current and projected water usage in the District by user category. Single Family and Duplex Residential usage for FY 2019 totals 6,052,536(ccf) out of Total Usage of 9,936,843(ccf), or **61%** -- an accurate representation of the proportionate “cost of service” for those parcels. However, annual CMF meter revenues for 5/8” (\$6,740,615), 3/4” (\$834,831) and 1” (\$5,221,245) are a combined total of \$12,796,691, or **78%** of the total revenues of \$16,500,398 (see Ex. 2, which shows, by meter size, MMWD’s first year CMF revenues, which will substantially increase up to 4% per annum). Therefore MMWD’s CMF for metered residential properties are generating at least **17%** excess revenues over the cost of service for metered residential properties (apart from other excess revenue related to unlawful charges embedded in the CMF that should be removed – see additional description *post*). Given that the projected CMF revenues are projected to be \$16,500,398 (see Ex. 2) for the fiscal year starting July 1, 2019, these overcharges alone at 17% account for approximately **\$2,805,067** of unlawful revenue from residential fee payers annually.

38. For the WMF the overcharge disparity between percent of water use and percent of charges / revenue is even **greater**, even though the WMF also is tied to meter size. (See last page of Ex. 6 for chart of bi-monthly WMF charges.) This occurs because the District chose to put a regressive “per customer” base charge of about \$6.29 in each bi-monthly WMF on the theory that the District’s “stewardship” of the watershed has a flat undifferentiated value to each customer of that amount, and then the remainder amount of the WMF is asserted to be tied to “water quality” and therefore charged out on an “Equivalent Meter Unit” (EMU) basis which escalates with meter size. (See Corollo Study, May 2017, at p.40.) For example, the 2019 WMF adopted by the District for 5/8” meters is \$10.29 as a composite bi-monthly charge of the approximately \$6.29 base fee and an additional \$4.00 for the meter size. The 2019 WMF for 1” meters is \$16.30 as a composite bi-monthly charge with the same \$6.29 base fee and approximately \$10.01 for the meter size. Note (see Ex. 2) that 68.08 % of all of the District’s meters are 5/8” in size (used only for residential purposes) – which means that the base charge component of the WMF heavily skews its impact to residential users. Consequently, while

residential single family and duplex WMF payers use approximately 61% of the District's total water usage, the same WMF payers contribute 86% of the WMF revenue – payment of roughly 25% excess revenue over the cost of service (apart from other excess revenue related to unlawful charges embedded in the WMF that should be removed – see additional description *post*). Given that the projected WMF revenues are in excess of \$4,709,000 annually starting with the fiscal year 2019-2020, these overcharges alone at 25% account for approximately \$1,177,250 of unlawful revenue from residential fee payers annually for the WMF alone (in addition to the \$2,805,067 abovementioned residential customer CMF overcharge).

A.3. Overcharges To CMF And WMF Payers For New Capacity For Future Users

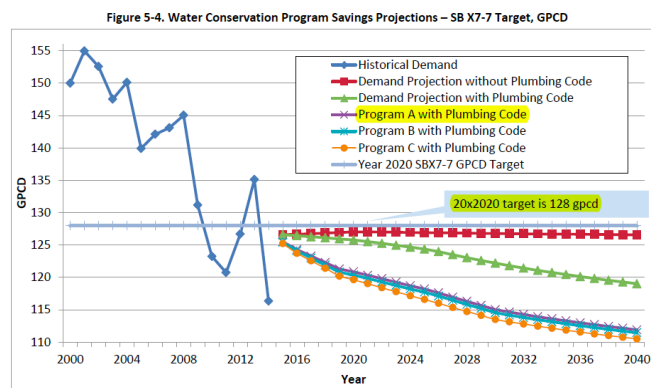
39. The 2015 UWMP shows that the expected water service population in MMWD will expand from about 191,800 people in 2020 up to 210,900 people in 2040 – an increase of about 19,100 people in the next 20 years. 2015 UMWP, at p.24, Table 3-4:

Table 3-4 below provides population projections for the service area.

Table 3-4. (DWR Table 2-2) Population – Current and Projected

	2015	2020	2025	2030	2035	2040
Population Served	188,200	191,800	196,000	200,400	205,500	210,900

40. At the same time the 2015 UWMP shows that the average per capita water use in MMWD is projected to decline from a point slightly below the 2020 target of 128 gpcd (“gallons per capita per day”) to about 112 gpcd by the year 2040. 2015 UWMP, at p.43, figure 5-4. “Water Conservation Program Savings Projections – SB X7-7 Target, GPCD”:



Notes:

1. All line types shown in the legend are presented in the graph. (The following demand scenarios, Program A, Program B, and Program C, are close in value and therefore indistinguishable in the figure.)
2. Note the decline in water use in the 2014 dry year and 2008-2011 economic recession.

“Program A with Plumbing Code” in the figure above is the conservation approach adopted by MMWD, which entails aggressive implementation of existing conservation measures along with enhancements, while enforcing the newly adopted Plumbing Codes for water use efficiency. The effect of reduced per capita usage reduces projected demand both by existing water users and by new users as they arrive in the District, essentially offsetting the otherwise increased demand from the population increase of 19,100 people up through the year 2040. (And these projections in the 2015 UWMP were made *before* AB 1668 and SB 606 mandating indoor water usage standards of 55 gpcd until 2025, further reduced to 52.5 gpcd till 2030, then reduced to 50 gpcd thereafter, per Water Code §10609.4). The 2015 UMWP therefore contains the following overall projection of water use up through the year 2040 as virtually no net gain: 2015 UMWP, p. 44, Table 6-1 “Water Use Projections (Acre Feet / Year)*---

Table 6-1. Water Use Projections (Acre-Feet/Year)*

	2015	2020	2025	2030	2035	2040
Demand without Plumbing Code (AFY)	26,705	27,311	27,884	28,478	29,179	29,921
Demand with Plumbing Code (AFY)	26,705	27,043	27,325	27,451	27,743	28,137
Demand with Plumbing Code and Program A	26,478	25,983	25,969	25,836	26,096	26,454
Demand with Plumbing Code and Program B	26,458	25,877	25,863	25,731	25,991	26,348
Demand with Plumbing Code and Program C	26,416	25,723	25,615	25,494	25,763	26,122

*Data is not weather normalized. Base year water demand is based on 2008-2013. 2014 was not used since it was a drought year. Total water use is potable and raw water only. Does not include recycled water use. Recycled water use and projection are in a separate section in the UWMP.

These findings from the 2015 UWMP (not even accounting for the subsequent 50%+ more drastic conservation reductions in per capita water usage dictated by AB 1668 and SB 606) indicate that the District would not need to invest in additional water capacity enhancing improvements and infrastructure to meet customer needs through the year 2040.

41. The next step in the District’s planning process, however, was the March 2017 MMWD “Water Resources Plan 2040,” RMC & Woodward & Curren Consultants, referred to herein as the “WRP 2040.” That consultant study provided the basis for MMWD to pursue a highly expensive goal of “resiliency” that would generate new / increased future water service

capacity of about 2,000 AFY **made necessary only by future residential growth in the District** and not by the **existing** water users who will pay for it via new / increased fees.

42. The term “**resiliency**” is used by the District and its consultants in a technical sense as a term of art that ties back to the definitions and findings in the WRP 2040. “Resiliency” means: the ability of the District to withstand “potential threats to reliability” of the water system from a variety of at least seven different hazards/emergencies (severe drought, climate change, wildfire, earthquake, interruption of imported supply or individual reservoir interruption, landslide, power failure) and still maintain the “baseline operational yield” of the system. The District and its consultant calculated the “baseline operational yield” as being “a 25% storage reserve in MMWD’s reservoir system,” with the result that “MMWD’s operational yield is 29,020 AFY” retained in its reservoirs. (WRP 2040, at Appendix D “Marin WaterSim Model Operational Yield Analysis Technical Memorandum,” p.2.)

43. The question addressed in the WRP 2040 is whether the District is positioned –going out to the year 2040—to survive the various water “reliability threats” and still maintain its “operational yield”; and if there is a probability that any of those seven hazards/emergencies might cause the District to fall below its standard of operational yield, what measures should be taken to enhance system capacity or otherwise to establish the desired 2040 **resiliency**? The ultimate answers to those questions are in the District’s unlawful choice to pursue exorbitant revenue enhancement through the imposition of a new CMF and a concomitant increase in the WMF imposed on the **existing** water users. Both the Prop 218 Notice of intended new / increased fees and the “findings” in Ordinance No. 442 formally adopting the fees state that the intended purpose and use of the new fee revenues will be for “building resiliency” and ensuring a “resilient water supply for the future” (Prop 218 Notice, Ex. 6, p.3, 8), and the \$16.5M of expenditures per year from the new CMF revenues will represent “significant and necessary improvements” to contribute to the “resiliency of the District’s water system” and “building resiliency” into the District system (Ordinance No. 442, Ex. 7, p.10, 12).

44. The cost of “resiliency” going out to 2040 is revealed in the details of the WRP 2040. First, to create a baseline the Plan projected future water demand from 2020 up to 2040, which

reflects population growth of about 20,000 people, and the offsets from increasingly stringent water conservation. (The Plan referred back to the 2015 Urban Water Management Plan and uses the same sources of data. See WRP 2040, p.4-1,8-1). In order to assess the “resiliency” impact of the various aforementioned threats, the WRP starts by projecting the base water demand (status quo ante) through 2040. The WRP projected base water demand of about 25,000 AF demand in 2020, and declining slightly to 24,200 AF in 2040. (See WRP 2040 at p.4.2) Here again it should be noted that the WRP published in 2017 did not consider the 2018 legislation (AB 1668 & SB 606) that subsequently set targets of 55 gpcd till 2025, 52.5 gpcd t2026-2030, and 50 gpcd from 2030 forward. The projected future water demand is likely to be substantially lower than WWP 2040’s projections after the subsequently enacted state law water conservation mandates are factored in.

45. Then, for the next step in the WRP 2040 “The reliability threat scenarios were tested to determine whether they would produce supply deficits with a projected 2040 demand of 24,200 acre-feet (AF) and 25% emergency storage in MMWD’s reservoirs.” (WRP 2040 at p.4.2) After analyzing the potential impact on MMWD’s water supply from severe drought, climate change, wildfire, earthquake, interruption of imported supply or individual reservoir interruption, landslide, and power failure, the consultant found that (see WRP 2040 at p. 8-1):

The analysis conducted in support of the district’s WRP 2040 has determined the district’s current supply portfolio is sufficient to meet demands in each of the reliability threats modeled except the Six-Year Severe Drought. It should be noted that the probability of the Six-Year Severe Drought occurring is low. Should this drought occur, shortages would not be expected until the fifth year of the drought, which provides time to re-assess and move forward implementation of resiliency options after the drought starts. As a result, there is not an immediate need to invest in infrastructure to secure additional resiliency at this time. However, to continue strengthening the district’s water supply resiliency, it is recommended that the district expand existing water efficiency programs. This could involve implementing the Expand Existing Programs alternative as discussed in Section 6.2 Alternatives Development and Analysis, which would increase water conservation, expand watershed management, and explore opportunities associated with in-lieu groundwater transfers. [emphasis added]

1 Notably, when the “**wildfire**” reliability threat was analyzed, the Plan found that despite
2 temporary (up to 3 months) localized water quality impacts (turbidity from runoff), there
3 would be **no significant impact on water supply reliability** for MMWD. (WRP 2040,
4 Appendix E, p.3-4).

5 46. “**Severe drought’ was the only condition seen to produce significant deficits.**”
6 (WRP 2040, Appendix E, p.9.) And even then, the Plan’s definition of “severe drought” begins
7 with a 6 year continuous drought that has a probability of 3% to 4%, and includes a 9 year
8 continuous drought that has a probability of less than 1%. (ibid.) The Plan notes that droughts
9 of this kind are “more severe in magnitude and duration than any droughts seen in recorded
10 history, or predicted with climate change.” (ibid., p.8) Regardless of low probability the Plan
11 analyzes the impact of the most likely of the severe drought scenarios (ibid. p.8-9), in which
12 the water imports from Sonoma County Water Agency (SCWA) are curtailed at the level of
13 5,300 AFY, emergency storage in reservoirs is held at 25%, the water supply goes into deficit
14 on year 5 of the drought, and the amount of the water shortage (AFY) is a first year deficit of
15 **1,701 AFY**. The Plan recommends a prudent long-term build up of “resiliency” –i.e., additional
16 capacity—for the District to be prepared for future drought events. (WRP 2040, Appendix I,
17 Recommended Alternatives, p.10.) And the Plan suggests that “shortages would not be
18 expected until the fifth year of the drought, which provides time to re-assess and move
19 forward implementation of resiliency options after the drought starts.” (WRP 2040, p.8-1)

20 47. The WRP 2040 then developed and examined 40 “resiliency options” that
21 individually or collectively could be applied by the District to achieve the desired resiliency.
22 (See WRP 2040 Appendix F, Resiliency Options Technical Memorandum.) MMWD settled on a
23 package of 3 resiliency options titled in the Plan as “Expand Existing Programs.” (See WRP
24 2040, Appendix I, p.3 & Table 3-1, a copy of which is attached hereto as “Ex.8” and
25 incorporated by reference herein, highlighting added to original to direct attention.) The 3
26 component parts of “Expand Existing Programs” are “WE01 Enhanced Conservation,” “ES07
27 Santa Rosa Plain Conjunctive Use,” and “EO03 Watershed Management.” The composite
28 water yield from this package at **2,000 AFY** Dry Year Yield and 1,200 AFY Average Year Yield

1 is appropriately scaled to the roughly 1,701 AFY initial deficit benchmark examined for the 6
2 year severe drought “resiliency threat.” However, the capital costs for this package and the
3 \$/ AFY cost of water are beyond all reason. Table 3-1 from the WRP 2014 (Ex. 10 herein) shows
4 that this package has a lump sum capital cost of \$133.8M and an annual cost of \$10.4M, owing
5 to the exceptionally high cost “watershed management” a key component of the “Expand
6 Existing Programs” option for producing additional water. The outsized cost of this strategy is
7 apparent in the comparison table detailing all 40 “resiliency options” and their cost of water
8 per AFY (WRP 2040, Appendix H, Attachment A, p.A-1, attached hereto as “Ex. 11” and
9 incorporated by reference herein). “Watershed management” water at \$24,200/ AFY is the
10 third most expensive of all 40 options, dwarfing the cost of water production technologies like
11 desalination (see Ex. 11 rows labeled DS01—DS05) and recycling (see RU01 DPR SASM –
12 RU04 DPR Through Lakes CMSA) all under \$5,000/ AFY, and rivaled in cost only by marginal
13 technology like E001 “fog capture” at \$25,000/ AFY and transfer of water from distant
14 Humboldt County at \$28,600/ AFY.

15 48. The WRP 2040 has a detail page for each of the 3 components of the “Expand Existing
16 Programs” package. “Watershed Management [EO03]” in Appendix I at p.82-83 of the Plan
17 (attached hereto as “Ex. 12” and incorporated by reference herein) shows a “probable capital
18 cost” of \$132,840,000, together with a water yield estimate of 210 AFY and an average cost of
19 \$24,200 AFY. “Enhanced Water Conservation [WE01] in Appendix I at p.1-2, of the Plan
20 (attached hereto as Ex. 13 and incorporated by reference herein) shows zero capital investment
21 costs, a water yield of about 1,000 AFY, and an average cost of \$990 AFY. “Santa Rosa Plain
22 Conjunctive Use [ES07]” in Appendix I at p.52-53 of the Plan (attached hereto as Ex. 14 and
23 incorporated by reference herein) shows probable capital cost of \$1,000,000, a water yield of
24 about 900 AFY, and an average cost of \$1,400 AFY. The “Watershed Management” component
25 comprises over 99% of the monetary cost of the option designated in the WRP 2040 as “Expand
26 Existing Programs.”

27 49. Petitioners allege that MMWD is pursuing the goals and expenditures for “resiliency”
28 as described in “Expand Existing Programs,” with expenditures embedded in MMWD’s most

1 recent MMWD budget and capital improvement plan, which will be funded by revenues from
2 the CMF and the WMF. Petitioners are informed and believe that there has been no significant
3 change in the amounts of the planned expenditures from the “Expand Existing Programs” that
4 have been carried into the current CMF/WMF financing (other than inflation). The annual
5 expenditures for the “Expand Existing Programs” items were and are anticipated to be in the
6 amount of about \$10.4M. As a result of the fee increases passed in Ordinance No. 442, the
7 District will collect CMF and WMF fees totaling over \$21M (and increasing up to 4% per year).
8 The aforescribed \$10.4M is a portion of those fee revenues.

9 50. Petitioners are informed and believe, and thereon allege, that \$10.4M in new CMF
10 and WMF revenues collected annually by MMWD is devoted to the creation of no more than
11 2,000 AFY of **new capacity “resiliency”** in the District water system. For all of the existing
12 water user fee payers in MMWD that have already paid for their capacity in the water system,
13 and who will continue to reduce their total water usage over the next 20 years through
14 ongoing water conservation efforts, the new capacity created by these fee revenues will
15 provide no service to them whatsoever. New capacity will only be needed in the next 20 years,
16 if at all, to provide capacity and water service to the roughly 20,000 new residents expected to
17 come to the MMWD jurisdiction from now till 2040. MMWD cannot lawfully compel
18 Petitioners and all other existing water customers to pay at least \$10.4M annually in CMF and
19 WMF fees for which they receive no service.

20
21 **B.1 The CMF Is Disproportionate, Collects Excess Revenue Beyond The Proportional Cost**
22 **Of Service, And Violates MMWD’s Past And Present Standard For Allocating Capital Costs**
23 **To The Individual Property Owners Paying The Fee.**

24 51. MMWD chose to formulate and impose a “Capital Maintenance Fee” on its customers
25 using **meter size** for fixed rates to be paid in every bi-monthly bill. The CMF is scaled upwards
26 from the 5/8” meter size- \$163.50, to 3/4”- \$245.25, to 1”- \$408.74, to 1½”- \$817.47, and more as
27 the diameter of the meter increases. The rationale given by MMWD for using meter size as the
28 metric for charging the CMF was that (a) this is a fee for maintenance, repairs, replacements

for capital improvements as well as other new capital improvements for the water system; (b) the maximum hydraulic capacity of a meter to deliver water is a way to assess the potential for a service connection to place demands on the entire system and the capital infrastructure that supports it; (c) the capacity of the 5/8" meter is used as the benchmark "Equivalent Meter Unit" (EMU) with a value of 1 – increasing in steps of capacity with 3/4"=1.5 EMUs, 1"=2.5 EMUs, 1½ " = 5 EMUs, and beyond; and (d) therefore the CMF rates to recover these capital infrastructure costs would be imposed in increasing fixed charge blocks tied to meter size/EMU. The adopted CMF rate structure is illustrated in the figure below, showing that about 69% of fee payers would be in the first "block" for the 5/8" meter rate of \$163.50; 5.6% in the 3/4" block rate of \$245.25; 21% in the 1" block of \$408.74; and 3.8% in the 1½ block-\$817.47. The 5/8" to 1½" meters predominantly serve single-family residential customers.

AFY
1.2

CMF Rates: Disproportionality & Overcharging

RED LINE → For any capital costs incurred by MMWD that are properly attributable to existing customers, the RED LINE represents the current factual and legal allocation of the "cost of service." The data for the RED LINE comes from the MMWD "Water Connection Fee Study," August 2108, The Reed Group, "Ex. C.", which calculated the average annual water use for each of the District's over 300 service areas. The same data, and this RED LINE, also represent MMWD's proportional allocation of the total cost/value of the capital infrastructure of the District to individual parcels receiving water. The RED LINE displays the Reed group data for MMWD single family residential water customers average annual water use (annual avg.), starting on the left at the lowest water use – 0.9AFY – then extended cumulatively by % to the right and scaled vertically to show increasing usage amounts until 100% of residential customers are accounted for, including the tiny % of users who use extremely large amounts of water.

INCREASING BLOCK RATES for the CMF → MMWD chose to charge the CMF by meter size, resulting in increasing block rates that are incongruous with the District's existing (Reed Group study) allocation of the total cost/value of its capital infrastructure to individual parcels receiving water. The increasing block rates begin on the left at the 5/8" meter with a fixed charge of \$163.50, and the block is extended cumulatively to the right to include 69% of all MMWD customers. The heights of the rate blocks are scaled in proportion to their charges. Meter sizes larger than 1-1/2" are only 1.45% of District customers, are considered negligible, and are accounted for by the grey bar at the far right side of the figure. Relative to the RED LINE the 5/8" meter block is scaled vertically to coincide with the median annual water use of .21 AFY.

0.0

% -> 0 10 20 30 40 50 60 70 80 90 100

5/8" Meter

3/4"

1"

1½"

1 52. However, without explanation and over the protests of Petitioners and the public,
2 MMWD ignored the very different methodology that it has used for many years to allocate the
3 value of the District's capital infrastructure to individual property owners and charge them for
4 their proportionate share of capacity in the system. That *existing* methodology had been
5 reviewed and reaffirmed by the District as recently as August of 2018, as detailed in the
6 "MMWD, Water Connection Fee Study FINAL REPORT," AUGUST 2, 2018, The Reed Group,
7 Inc. with Raftellis Financial Consultants, Inc., followed almost immediately by an increase in
8 the "connection fee" in reliance on the Report. "Connection Fee" is just the terminology used
9 by the District for what is generally and legally known as a "capacity charge" (Gov. Code
10 §66013). (See Reed Report, p.1, fn.1) A capacity charge is not legally the same species of fee as
11 a recurring bi-monthly fee for capital improvements, but **factually they are the same in that**
12 **both are charges intended to reflect the property owner's proportionate share of the demand**
13 **"capacity" of the water system capital infrastructure.** The only difference is that the District's
14 capacity charge has been in place and relied upon for over 20 years and the CMF is brand new.

15 53. The "connection fee" or "capacity charge" is paid only once. When the property
16 owner connects to the MMWD system he/she must pay this charge as a "buy-in" of the
17 proportionate share of the capacity of the system capital infrastructure. The calculation of the
18 charge requires a metric or methodology to determine the individual property owner's
19 demand on the capacity of the system. MMWD is extraordinary in having developed a finely
20 grained updated data base for estimating a property owner's proportionate demand on the
21 capacity of the system; *it is based on the average annual water use in the localized*
22 *neighborhood/service area where the property is located.* MMWD has a sprawling and diverse
23 jurisdiction that they have broken down into 300+ separately designated "service areas."
24 There is a high degree of variability and differing conditions in the District (e.g., types and
25 sizes of residences, land area and landscape; microclimates; demographics; etc.), resulting in the
26 wide range of Average Annual Water Usage among these localized service areas from a low of
27 0.09 AF to 2.03 AF. An entire list of the 300+ service areas is attached as Exhibit C-1 to the Reed
28 Report, and also attached here as "Ex. 15."

54. Below is a snippet of the beginning of that list.

Exhibit C-1
Marin Municipal Water District
Water Usage Factors for Single Family Dwellings

Service Area No.	Service Area Name	Average Annual Water Usage (AF) (1)	SF Dwelling Connection Fee (\$/SFD) (2)
AREA 1 - SAN GERONIMO			
1	RAILROAD AV	0.20	\$6,836
2	S.G. VALLEY DR	0.24	\$8,203
3	MEADOW WY	0.26	\$8,887
4	S.G. 6 TANK	0.15	\$5,127
5	DRAKE & TAMAL	0.24	\$8,203
6	L-7 TANK	0.21	\$7,178
7	L-6 TANK	0.25	\$8,545
8	L-5 TANK	0.17	\$5,811
9	LAGUNITAS DR	0.16	\$5,469

The average annual water usage for the localized service areas is shown in the third column. For any property owner to find out the amount of the capacity charge for a particular parcel, first he must identify the location of the parcel to the applicable service area among the 300+ on the list. The average annual water usage shown for that service area is the District's metric for "capacity."

55. To convert "capacity" to an actual charge the Reed Report calculated the depreciated replacement cost value of the **entire capital infrastructure of MMWD**, which comes out at \$754,752, 294. The water system valuation then is divided by the existing total water system demand (one year) of 22,082 AFY, to yield a Water Connection Fee (\$/ AF) of **\$34,180** (base amount). MMWD approved the results of the Reed Report with an increase of the connection fee to \$34,180 in October of 2018 (see MMWD rate schedule attached hereto as "Ex. 16" and incorporated by reference herein); effective July 1, 2019, MMWD extended the fee with a slight increase to \$34,453 ("Ex. 17" attached hereto and incorporated by reference).

Exhibit 1				
Marin Municipal Water District				
Water Connection Fee Calculation				
Fixed Asset Class (1)	Acquisition Value	Book Value (6/30/2017)	Replacement Value	Depreciated Replac. Value
Land and Land Rights	\$ 11,539,660	\$ 11,539,660	\$ 99,490,878	\$ 99,490,878
Buildings	\$ 23,435,208	\$ 10,625,715	\$ 53,704,916	\$ 15,529,512
Dams & Reservoirs	\$ 42,306,303	\$ 25,202,755	\$ 274,448,559	\$ 114,690,013
Storage Tanks	\$ 67,959,032	\$ 50,286,352	\$ 147,248,136	\$ 77,036,457
Pumping Plants	\$ 31,018,831	\$ 11,718,590	\$ 71,529,496	\$ 15,718,043
Water Treatment Plants	\$ 46,916,967	\$ 17,255,605	\$ 131,316,378	\$ 26,355,314
Transmission & Distribution	\$ 280,058,422	\$ 211,390,847	\$ 731,228,144	\$ 399,187,400
Construction in Progress	\$ 30,301,824	\$ 30,301,824	\$ 35,299,988	\$ 35,299,988
Water Supply Entitlements (2)	\$ 19,623,196	\$ 58,980,796	\$ 44,088,078	\$ 17,877,891
Fixed Asset Totals	\$ 553,159,443	\$ 427,302,144	\$ 1,588,354,574	\$ 801,185,495
Plus Capital Project Reserves (2)				\$ 1,610,794
Plus Past Interest Payments (3)				\$ 76,832,682
Less Outstanding Principal on Debt (2)				\$ (124,876,677)
Water System Total Valuation				\$ 754,752,294
Existing Water System Demand (AF) (4)				22,082 AF
Water Connection Fee (\$/AF)				\$ 34,180

Notes:

- (1) From fixed asset listing as of June 30, 2017, excludes service connections, meters, vehicles, equipment and low-value assets. See Appendix B for detailed listing of assets.
- (2) As of June 30, 2017 based the District's Comprehensive Annual Financial Report for FY 16-17.
- (3) Includes interest payments on long-term debt since 1993, based on debt service schedules. Excludes future interest payments.
- (4) Based on average annual water sales for 2016 and 2017.

56. The final fee is derived from multiplying that \$/AF base amount by the average annual use capacity factor for the localized service area. For example in the previous snippet taken from Ex. C to the Reed Report, the first localized service area is designated "RAILROAD AV." For a parcel located in that localized service area, the average annual water use is 0.20, multiplied by \$34,180 yields a capacity charge of \$6,836. The **meter size is irrelevant to the calculation of capacity because a more accurate metric for capacity demand is used.** The charge is the same whether a 5/8" or a 1½" meter is in place.

57. The Reed Report (at p.7) summarizes the reason for the District's use of this specialized water usage metric for capacity:

Estimated annual water demands for new single family residential connections are based on the area average of the neighborhood (service area) in which the new homes are to be built. The District uses this methodology because it more accurately represents the estimated annual amount of water to be used, as opposed to simply basing the fee on meter size, which is the methodology commonly used in the industry. The District's methodology also accounts for the varied single-family residential water use patterns throughout the District's service area. These

1 varied patterns are influenced by land use decisions made by the County and cities within the
2 Marin County, parcel size, local demographics, microclimates, and other factors. There are about
3 300 separately designated "service areas" within the District's water service boundaries.

4 58. The Reed Report methodology for determining capacity charges is compliant with
5 industry standards and practices for rate setting by water agencies, and by contrast, MMWD's
6 meter-size based block charge for CMF and WMF are not. American Water Works Association
7 (AWWA) Manual M1, "Principles of Water Rates, Fees, and Charges," Seventh Edition,
8 comments on the use of block rates by meter size and customer class (at p.127): "A utility can
9 also implement an increasing block structure by meter size if it can demonstrate a consistent
10 relationship or homogeneous usage by meter size. Customer classes that do not
11 demonstrate uniform demand patterns might be adversely affected by an inclining block
12 structure." As noted in the Reed Report there is great variation in water demand among the
13 residential water users in MMWD, and diverse circumstances for residential water users
14 across the broad jurisdiction of MMWD. There is no study, evidence or information that
15 among residential customers in MMWD there is "homogeneous usage by meter size." In fact,
16 the usage patterns of our Petitioners and MMWD customers broadly demonstrate the
17 contrary. The use of meter size as a metric for "capacity" for residential customers in MMWD
18 is contrary to industry standards and practices.

19 59. The District's long established methodology for allocating the cost of capital facilities
20 in connection/capacity charges means that virtually every residential property owner/water
21 customer has an existing interest in the capacity of the capital facilities of the District as
22 measured by the annual water use standard. This existing interest extends to the property
23 owner's proportionate interest in the capacity of 100% of the capital infrastructure of the
24 District. However, the CMF purports to charge for "capital maintenance," repairs,
25 replacements, etc. of **the same capital facilities** but only at the fixed block meter rates.
26 Consequently the District uses one metric (localized avg. annual water use) for a property
27 owner to *acquire* a certain amount of capital infrastructure capacity, and then a completely
28 different metric (meter size) to charge the property owner, via the CMF, for the apportioning

1 of *maintenance* of that same infrastructure. Petitioners allege that on its face it is arbitrary,
2 capricious, and unreasonable to impose meter based fees for the “maintenance” of capital
3 facilities that have been, and continue to be, bought by property owners via a completely
4 different metric that’s much more accurately apportioned.

5 60. Further, Petitioners allege that the vast majority of residential property owners are
6 charged more than the cost of service for the CMF by the District’s improper use of meter size
7 as the metric for system capacity demand. The figure above (¶46) depicting block rates by
8 meter size also shows a RED LINE to illustrate the very different results obtained by using the
9 localized service areas capacity factors derived from annual water use. The RED LINE is an
10 array of the average annual residential water use figures for each of the District’s over 300
11 local service areas, arranged by increasing acre feet per year (as compiled and updated by the
12 District, Ex. 13 hereto). The red line reaches the median point of water use (.21 AFY) at the 50%
13 mark for all residential fee payers, then slopes upward on a curve till it accounts for 100% of
14 the residential fee payers. This figure illustrates Petitioner’s allegation that MMWD’s block
15 rates based on meter size are fundamentally incongruent and irreconcilable with the District’s
16 long established methodology for allocating costs of capital facilities based on average annual
17 water use. By knowingly selecting a less accurate method for apportioning capital costs (the
18 meter-size CMF and WMF) to individual ratepayers, MMWD collects charges greater than the
19 proportional cost of service attributable to the individual parcel for a large number of its
20 customers, in violation of Art. 13D §6(b)(3).

21 61. Petitioners allege that the District’s use of meter size for the CMF results in
22 overcharges in every category of the residential meters, and is especially pronounced for: low
23 water usage property owners with 5/8” meters; and for property owners with 1” meters,
24 which includes those needed for fire sprinklers, and also many other customers with large
25 meters who rarely use much water (amounts that could easily be delivered annually with a
26 5/8” meter). The extent of MMWD’s overcharging across its customer base is represented by
27 the area of respective blocks that is above the red line. The amount of the CMF overcharge due
28 to use of the defective meter based metric for capacity varies depending on the average annual

1 water use of the localized service area where each individual parcel is located. Petitioner
2 estimates, subject to later proof on the matter, that over 70% of the residential CMF fee payers
3 are overcharged due to the District's use of a defective metric for "capacity."
4

5 **B.2. The WMF Is Greater Than The Proportional Cost Of Service Attributable To the Parcel**

6 62. The Watershed Management Fee (WMF) is also charged by MMWD on the basis of
7 meter size, on the same rationale that the service from the fee activity corresponds to the
8 individual water user's "capacity" for use of the water system. The District's improper use of
9 residential meter size as the metric for capacity in the water system creates charges in excess of
10 the cost of service, in a manner parallel to that for the CMF. In addition, there is no available
11 reduction in the WMF for meters upsized to 1" or 1½" to allow fire sprinklers or to compensate
12 for low system pressure, as compared to the CMF (Ordinance No. 442, MMWD Code
13 §6.01.024). The amount of the WMF overcharge due to use of the defective meter based metric
14 for capacity varies depending on the average annual water use of the localized service area
15 where the parcel is located. Petitioner estimates, subject to later proof on the matter, that over
16 70% of the residential WMF fee payers are overcharged due to the District's use of a defective
17 metric for "capacity."
18

19 **B.3. Fire Protection Charges Embedded In The CMF/WMF Are Disproportionately Excessive**

20 63. MMWD uses some of its Watershed Management Fee funds for fire protection
21 purposes. Attached hereto as "Ex.18," and incorporated by reference herein, is an
22 informational report from MMWD (September 27, 2018) describing how MMWD has: built
23 and permanently maintains 1000 acres of fuel breaks, focusing on neighborhoods on the
24 perimeter of the watershed; implemented a Resilient Forests Project; cleared away dense
25 underbrush and accumulated fuel load; and in 2018 invested \$1 million in contract labor to
26 manage fuel breaks, forests and invasive weeds, with the expectation of tripling that
27 investment going forward; purchased firefighting equipment; developed training programs
28 for their rangers; purchased a skip loader and a water tanker; and coordinated with other

1 agency fire departments. Attached hereto as "Ex.19" are four Powerpoint slides presented to
2 the MMWD Board on May 15, 2019, describing the activities and investments MMWD intends
3 to make in reducing wildfire risk and fighting wildfires. The first slide in Ex. 19 refers to
4 "Fire/Fuels Mgmt" as a "Capital Investment." MMWD takes the position that activities such
5 as brush clearing, removal of invasive weeds and maintenance of fuel breaks are "capital"
6 expenditures that may be paid for from their capital improvement fund.

7 64. When the CMF was brought forward the Prop 218 notice announced that "A portion
8 of the CMF will be dedicated to fund fire reduction efforts on our watershed." (Ex. 6, p.3) The
9 CMF revenues will go into the capital improvement fund, but from there it is not clear how
10 much will come out for "fire protection." There is no accounting from MMWD as to its actual
11 or intended expenditures for "fire protection," nor is there any specific allocation of funding
12 between the WMF and the CMF, and both funds will be used for "fire protection."
13 Nonetheless it is clear that MMWD will continue its existing fire protection expenditures and
14 additionally will implement its Biodiversity, Fire, and Fuels Integrated Plan (BFFIP) expected
15 to cost \$13.5 million in the next five years. (See "Ex. 20 attached hereto, BFFIP executive
16 summary of activities and costs.) Overall, Petitioners estimate that the District will spend over
17 \$15 million in the next five years on "fire protection" activities; this is an amount that may be
18 increased by discovery and according to proof. This amount is part of what MMWD claims as
19 its "cost of service" for the WMF and the CMF.

20 65. MMWD's charges for "fire protection" service are blended into their WMF and CMF
21 rates and paid equally by all of their water customers. This component of the charges is greater
22 than the proportional cost of service to individual parcels in two different ways. First, the fire
23 protection services focused on preventing wildfire from escaping the Mt. Tam preserve area
24 into adjoining residential communities is a service to those residential parcels within a
25 perimeter of 1 mile, or perhaps 2 miles, or at the most the entire Wildland Urban Interface
26 ("WUI") zone, but it does not provide a service to the thousands of water customers outside of
27 the WUI. Attached as "Ex. 21" is a map from the BFFIP (Fig.2-3) showing the District's Mt.
28 Tam land ownership boundary, a line depicting the one mile perimeter, and the WUI as it

overlays adjacent communities. Also attached (“Ex. 22” hereto) are maps from the BFFIP showing where MMWD puts concentrated effort into fuel breaks and defensible space in areas near San Anselmo, Ross, and Mill Valley. The areas at risk are also depicted in an earlier study, the “Wildfire Protection and Habitat Improvement Plan,” (WPHIP) August 2012, Charles & Assoc. , Figure 3-1 (“Ex. 23” hereto). That map shows the WUI nearby and states findings from GIS review that approximately 11,600 parcels with a “living unit” are within the one mile perimeter of MMWD land. The “fire protection” service provided by MMWD is a “service” to a limited class of parcel owners within a limited range of the District’s land; all other water customers of the District outside that zone of risk are disproportionately charged for a service they don’t receive.

66. MMWD takes the position that all of its “fire protection” efforts are just as necessary to protect its watershed and the water quality in its reservoirs. This is not true, because the most intensive “fire protection” activities (fuel breaks, brush clearing, etc.) are on MMWD land close to the residential communities and in subwatersheds that do not drain to MMWD reservoirs. Thus the “fire protection” activities there have no bearing on “water quality” in the District generally. See Ex. 23, Fig. 2-2 “Subwatersheds of Mt. Tamalpais,” and note that the subwatersheds adjacent to Fairfax, San Anselmo, Ross and Mill Valley drain into creeks flowing away from the MMWD watershed and *not* into MMWD reservoirs.

67. Second, there is a significant population of parcel owners using well water rather than District water. The exact number of well water users and their location is not precisely known, or if known was not revealed by MMWD, but can be roughly estimated. The “2016 Municipal Service Review” by the Marin County Local Agency Formation Commission” [“2016 LAFCO MSR” at p.4-113] found that there are 76,410 residential units (combined single family residential units and multi-family residential units) in the MMWD jurisdiction. If you add together the total number of residential size meters in MMWD at slightly less than 60,000, and estimate the number of multi-family residential units by their water usage at about 11,000 units, there is a gap of over 5,000 residential units that use well water. Given that the ten Cities and Towns in the District generally prohibit well usage and require water system connection

1 in their urban areas, the well-using parcels are more likely to be in the unincorporated area of
2 the MMWD jurisdiction on larger parcels and in less dense development –ie. more likely to be
3 in the WUI prone to wildfire risk. Regardless of the location of these well-water parcels, which
4 make up about 10% of all residential parcels, any “wildfire protection” service provided by the
5 District is a service provided to these parcels as well. When the proportional cost of service for
6 “fire protection” is properly allocated to all parcels receiving the service, the “cost of service”
7 to MMWD water users is roughly 10% less and the MMWD revenues from fees that include
8 fire protection are excessive by a corresponding amount.

10 **C.1. Fire Protection Is A General Governmental Service Not Allowed In A Prop 218 Fee**

11 68. Prop 218 Article 13D §6(b)(5) states that: “No fee or charge may be imposed for
12 general governmental services including, but not limited to ... fire ... where the service is
13 available to the public at large in substantially the same manner as it is to property owners.”
14 MMWD purports to provide fire services that extend to virtually all of its customers, but if
15 such a broad blanket of service across most of southern and central Marin County is true, what
16 discriminates or limits service to property owners served by MMWD rather than the public at
17 large? Petitioners are aware of no factors or evidence that limits the general public service
18 provided by MMWD’s wildfire protection and suppression. MMWD has not in any way
19 attempted to limit or restrict the service of wildfire protection so as to narrowly direct the
20 service only to MMWD water users or parcel owners and exclude all others in the public at
21 large.

23 **C.2. The WMF Is Explicitly A Charge That Includes “General Governmental Services.”**

24 69. The WMF is a composite charge comprised of a base per-customer charge (regardless
25 of meter size), combined with a charge levied by meter size. For a 5/8 inch meter, the bi-
26 monthly WMF charge (effective July 1, 2019) is \$10.29, which is the sum of a \$6.29 base charge
27 plus a \$4.00 charge specific to 5/8” meters. The meter based portion of the charge is supposed
28 to be directed to activities that support water quality. The base charge accounts simply for the

costs of “the District’s stewardship of this precious natural resource.” Corollo Study, May 2017, at p.40. The District’s stewardship is even more expansive now in its recent plans, funded by the WMF, to improve biodiversity in the District-owned Mt. Tam acreage, restore ecosystems, reintroduce native species of plants, and other activities described in the Biodiversity, Fire, and Fuels Integrated Plan (BFFIP; see 420). The District’s ecological stewardship of the Mt. Tam preserve watershed benefits the entire public, and is open to everyone without regard to whether you are a customer of MMWD or not. No matter how laudable or desirable MMWD’s “stewardship” of the watershed may be, this substantial component of the WMF is explicitly a “general governmental service” available to the public at large in the same manner as the property owners in MMWD. This portion of the WMF cannot be charged as a property related water service fee and is prohibited by Article 13D §6(b)(5).

D.1. There Is No Legal Authorization For MMWD Fire Protection Services

70. MMWD is a large sprawling special service district that provides water all across much of southern and central Marin County, covering ten municipalities, and including unincorporated portions of the County. Because the jurisdictional and service areas of local agencies may overlap, the State planning law has given authority to the Local Agency Formation Commission to coordinate the provision of municipal services so that there are no conflicts, gaps or duplication of essential municipal services. Attached hereto as “Ex. 24,” and incorporated by reference herein, is the cover page and page 4-118 of the LAFCO “Municipal Services Review” (MSR) for MMWD. The MSR states:

MMWD—which is currently one of 37 municipal water districts currently operating in California—is presently authorized to provide three specific services within its jurisdictional boundary: (a) domestic water; (b) non-potable water; and (c) recreation. All other latent powers enumerated under the principal act would need to be activated by LAFCO before MMWD would be allowed to initiate; similarly divestiture of existing powers would also require prior approval from LAFCO.

The MSR then lists the “Active Service Powers” as: (•) potable / non-potable water, and (•) public recreation. The “Latent Service Powers” are listed as: (•) hydroelectric power, (•) **fire protection**, (•) solid waste / garbage, (•) storm drainage, and (•) wind / solar power. There

1 have been no proceedings at LAFCO to change this status. Thus MMWD has no legal authority
2 to provide “fire protection” as a municipal service.

3 71. Another impediment to MMWD’s legal authority to provide “fire protection” service
4 is the consent requirement of Water Code 71680, which provides:

5 “If the district includes any part of any local agency which provides fire protection
6 service to any territory in the district, the district shall have no authority regarding the
7 prevention or suppression of fires, in that territory unless the district has obtained the
8 consent of the other local agency.”

9 The “fire protection” services which MMWD claims to extend across the reach of the District
10 would include the 10 municipalities and the County which have their own fire departments
11 and services. MMWD has not obtained the consent of any of those 11 local agencies for fire
12 protection service in their territories. Therefore MMWD has “no authority” for fire protection
13 services, and no basis to charge its water customers for fire protection service as a component
14 of the CMF and the WMF.

15 **D.2. There Is No Statutory Authority For WMF Charges**

16 72. There is no statute authorizing MMWD to impose a fee for “watershed management.”
17 When this was brought to the attention of the District the response from an opinion of outside
18 counsel was that they have authority under Water Code §108.5. That particular statute –which
19 was adopted after MMWD approved and began imposing the WMF—is a statement of general
20 State policy for State financing of water projects, and references only “source watersheds” that
21 supply a majority of the water in the state. It does not expand the authority of municipal water
22 districts or other local agencies to impose and collect fees. In the absence of statutory authority
23 the WMF is invalid.

24 **E. Failure To Conduct Elections – Art.13D §6(c)**

25 73. Art. 13D §6(c) requires an election and approval by a majority vote for property
26 related fees, except for “fees for sewer, water and refuse collection services.” Gov. Code
27 §53750(n) [Prop 218 Omnibus Implementation Act] defines “Water” as follows:
28

(n) "Water" means any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source .

"Water" and "water service," as those terms are used in both the Constitutional and statutory context, clearly refer to water that is conveyed in physical public improvements so that it may be distributed to parcels and water customers for use.

74. "Watershed," on the other hand, is an area of natural unimproved land that acts as a drainage basin or catchment for rainfall. The U.S. Geological Service ("USGS") defines "watershed" as: "A watershed is an area of land that drains all the streams and rainfall to a common outlet such as the outflow of a reservoir, mouth of a bay, or any point along a stream channel." (https://www.usgs.gov/special-topic/water-science-school/science/water...rainage-basins?qt-science_center_objects=0#qt-science_center_objects) The National Oceanic and Atmospheric Administration ("NOAA") defines "watershed" as: "It's a land area that channels rainfall and snowmelt to creeks, streams, and rivers, reservoirs, bays, and the ocean." (<https://oceanservice.noaa.gov/facts/watershed.html>) Thus "watershed" is the land on which rain falls, and is not "water" or any sort of man-made "public improvement" to serve water to parcels or customers of a public agency. The term "watershed" cannot be found in Article 13D of the California Constitution nor in the statutory provisions of the Prop 218 Omnibus Implementation Act.

75. There is no exemption from the election requirements of Art. 1D §6(c) for fees for "watershed management." If MMWD has any authority to impose a WMF at all, the fee is still subject to approval by election. The WMF was extended, increased and approved by MMWD by the action of the District Board in passing Ordinance No. 442, with no election, on the false premise that the fee is exempt from voter approval.

76. The CMF is problematic because it commingles legitimate maintenance of capital facilities with revenues also being used for fire protection and watershed management. The portion of the fee that is exempt from voter approval should not deny fee payers the right to vote on fees devoted to fire protection and watershed management. Given that the CMF has no distinct division or separation of the amounts that could be used for fire protection and

watershed management purposes, the entire CMF should be subject to voter approval as required by Prop 218.

F. Failure To Follow Mandated Procedures For Fee Adoption

77. Art. 13D, §6(a) and Gov. Code §53755 procedures for adoption of a property related fee require Notice to each parcel owner and tenant of the calculated amount of the fee applicable to the parcel, the basis upon which the amount of the fee was calculated, and the reason for the fee or charge. Notice must be given 45 days prior to the protest hearing and adoption of the new fee.

78. After the Notice went out in early May 2019 many residential customers with 1" or larger meters expressed concern about the high CMF charges, especially in circumstances where fire sprinklers had been installed. The response from the Board of MMWD in public meetings was that they would do something about that, without ever publicly coming to a conclusion on what should be done. There was no clarification of what would be done with large residential meters until Ordinance No. 442 was revealed just prior to the meeting of May 28, 2019. And then the provision in Ordinance No. 442 that deals with large residential meters, new MMWD Code §6.01.23, provides only an application to the District's General Manager who will decide without any firm objective criteria nor any commitment that all customers meeting explicit criteria will receive the contemplated relief: a reduction of only one meter size on the CMF. Such relief is at the General Manager's discretion under Ordinance 442. The District utterly failed and breached its duty to notify this class of water users of the proposed amount of the fee to be imposed on them – instead choosing to knowingly impose an excessive fee to be adjusted later at the sole discretion of the District Manager.

79. Further, Petitioners allege that putting a "floor" on the reduction of the fee by one meter size – such that the fee for the typical larger-sized residential meter of 1" (\$\$408.74) is reduced one meter size to the ¾" fee (\$245.25) and the 1½" meter CMF (\$817.47) is reduced one meter size to the 1" fee (\$408.74) -- has the effect of creating altogether new fees specially crafted for residential customers on fire suppression sprinkler systems supported by 1" and

1 1½" meters. These new fees were never described in the Prop 218 Notice for public
2 consumption and the required notice to individual property owners-- especially the thousands
3 of residential property owners using fire suppression sprinklers. In essence, the District
4 invented on the fly a new ¾" fee and a new 1" fee for residences with fire suppression
5 sprinklers, imposing excessive fee amounts that have nothing to do with actual water usage or
6 the District's cost of service, and that were only unveiled to the public upon the online posting
7 of Ord. 442 three business days before the May 28, 2019 approval.

8 80. The Prop 218 Notice must state the reason for the fee or charge. In this case, the
9 Notice gave the reason that "The CMF will support our 10 year capital improvement plan."
10 However there was no official or approved 10 year CIP. The District's prior fee studies had
11 worked only from 5 year CIPs with 5 year projections. ("MMWD Final Cost Of Service Study,"
12 May 2017, Corollo Engineers; "MMWD Water Financial Plan and Rates," March 2019,
13 Raftellis.) Prior to the Prop 218 Notice District staff had worked up their own unapproved,
14 unofficial preliminary 10 year CIP that extended to FY 28/29 with a total cost of \$232,626,000.
15 The unofficial CIP had never been exposed to public scrutiny, open discussion, or decision-
16 making by the District; the unofficial CIP did not have a final project list, did not have fixed
17 priorities, and was unpredictable as to its final form and any potential changes; there was no
18 commitment by MMWD to the unofficial 10 year CIP as a planning document, as a basis for
19 charging fees, or otherwise. At the May 14, 2019 Board meeting for MMWD, in discussion of
20 the proposed CMF, the question was asked by the public: Do you have a final approved 10
21 year CIP? The answer was that there was no final 10 Year CIP, and it would not be finalized
22 until the budget approval occurred in mid-June, after the rate hearing and Board vote to
23 approve. The follow-up questions to the Board were: What specifically are the projects you
24 intend to fund with the CMF, how much do these projects cost? When you haven't finalized
25 your projects and costs, you can't make valid assumptions and how do we the public assess
26 whether the needs and priorities are justified? The answer from the President of the Board
27 was: **"I think you need to have the money before you decide on your list of projects."** The
28 fees were approved on May 28, 2019. The District subsequently approved the budget and the

1 10 year CIP on June 18, 2019; in the mean time the 10 year CIP had increased in total amount
2 by about \$9M to \$241,379,000. MMWD never gave fee payers Notice of its real legally required
3 “reason” before adopting the CMF fees. It went for the money first.

4 81. In addition to the foregoing, MMWD extended and modified the CMF by adopting
5 “Policy No. 52” on June 27, 2019 (Ex. 8). The possibility of special fee deferrals and repayment
6 plans for local agencies was never mentioned in the Prop 218 Notice or otherwise before the
7 CMF was adopted on May 28, 2019. Petitioners and the public should not be bound to one
8 version of the CMF, only to have it modified afterward without notice or opportunity to follow
9 the Prop 218 process.

10
11 **G. Breach of mandatory statutory duties for accounting under Gov. Code §66013(c)(d)**

12 82. On a continuing annual basis MMWD receives on average about \$1M dollars in
13 “connection fees” – which are representative of a property owner’s “buy in” for a
14 proportionate share of the water system capital infrastructure. Those funds are then available
15 to the District for capital improvements, repairs and replacements: i.e., the same purposes as
16 the District’s ostensible purpose in imposing a CMF on existing water customers. The State
17 Legislature –in part because of a long history of water agency mismanagement of fees—
18 enacted Gov. Code Section 66013 containing the following management and accounting
19 mandatory requirements for water agencies collecting such fees (Section 66013(c)(d)):

20 (c) A local agency receiving payment of a charge as specified in paragraph (3) of
21 subdivision (b) shall deposit it in a separate capital facilities fund with other charges
22 received, and account for the charges in a manner to avoid any commingling with
23 other moneys of the local agency, except for investments, and shall expend those
24 charges solely for the purposes for which the charges were collected. Any interest
25 income earned from the investment of moneys in the capital facilities fund shall be
26 deposited in that fund.

27 (d) For a fund established pursuant to subdivision (c), a local agency shall make available
28 to the public, within 180 days after the last day of each fiscal year, the following
information for that fiscal year:

(1) A description of the charges deposited in the fund.

(2) The beginning and ending balance of the fund and the interest earned from
investment of moneys in the fund.

(3) The amount of charges collected in that fiscal year.

1 (4) An identification of all of the following:

2 (A) Each public improvement on which charges were expended and the
3 amount of the expenditure for each improvement, including the percentage of
4 the total cost of the public improvement that was funded with those charges if
5 more than one source of funding was used.

6 (B) Each public improvement on which charges were expended that was
7 completed during that fiscal year.

8 (C) Each public improvement that is anticipated to be undertaken in the
9 following fiscal year.

10 (5) A description of each interfund transfer or loan made from the capital facilities
11 fund. The information provided, in the case of an interfund transfer, shall identify
12 the public improvements on which the transferred moneys are, or will be,
13 expended. The information, in the case of an interfund loan, shall include the date
14 on which the loan will be repaid, and the rate of interest that the fund will receive
15 on the loan.

16 83. On a persistent and ongoing basis MMWD ignores and violates its statutory duties
17 under Gov. Code §66013 to account for its capacity charges, how they have been expended,
18 and how they are allocated to public improvements in combination with other funding
19 sources. This statutory violation deprives the public of essential information to ensure the
20 accountability of MMWD in its management of capacity charges and its expenditures on
21 capital improvements generally. This violation is independently actionable from claims related
22 to the CMF and WMF.

23 84. Additionally in regards to the CMF, Petitioners are informed and believe, and thereon
24 allege, that the annual stream of roughly \$1M of capacity charges taken in by MMWD is not
25 applied as a credit or contribution to the cost of public improvements as required by law.
26 If the approximately \$1M of capacity charge revenues were lawfully credited the “cost of
27 service” for the CMF would be \$1M less, and therefore the current CMF annually collects
28 revenues in excess of the cost of service by this amount of approximately \$1M.

29 **H. Increased fire hazard and incentivizing water waste – CMF and WMF.**

30 85. MMWD is primarily a residential water service agency with about 70% of its water
31 service connections dedicated to residential customers on 5/8 meters (Ex. 2). Moreover, the
32 strong current push of fire prevention policy is to convert residential service connections to 1”

1 or larger with fire sprinklers (County Fire Chief's letter – Ex.4). MMWD's new CMF and the
2 WMF based on meter size, which vastly overcharge on the upgraded meter size, have the
3 perverse effect of strongly discouraging the conversion to fire sprinkler systems.

4 86. Article 10 §2 of the California Constitution declares statewide policy that our water
5 supplies are to be put to beneficial use and shall be preserved from waste, unreasonable use
6 and shall be conserved. The CMF and WMF based on meter size fly in the face of statewide
7 policy initiatives to discourage water waste, e.g. via escalating fees tied to higher consumption.
8 Instead, MMWD's CMF / WMF fixed meter rates are scaled upwards to the hydraulic capacity
9 of each meter size: the idea is to charge for the maximum instantaneous water draw of each
10 meter – a not-real-world, theoretical scenario that is unrelated to actual water usage and
11 demands. Instead of basing the CMF / WMF on usage or a proven proxy of usage (such as the
12 local service area capacity charges), MMWD forces residential customers with large meters to
13 pay for capacity they don't use, don't need and maybe don't even want. With the big jump in
14 the CMF fee from \$163.50 for 5/8" meters to \$408.74 for a 1" meter and \$817.47 for a 1.5"
15 meter, customers are incentivized to use the excess capacity they have already paid for just by
16 paying a little bit more on the commodity charge. The District's fixed rates for meter size –
17 unrelated to water usage-- thus encourage water waste and hinder conservation.

18
19 **PETITIONERS THEREFORE SEEK ALTERNATIVE AND**
20 **PEREMPTORY WRITS OF MANDATE AS FOLLOWS:**

21
22 **A. WRIT OF MANDATE (CCP §1085) TO ENFORCE CALIFORNIA CONSTITUTION**
23 **ART. 13D §6(b)(1), TO PROHIBIT RESPONDENTS FROM IMPOSITION AND**
24 **COLLECTION OF THE CAPITAL MAINTENANCE FEE AND WATERSHED**
25 **MAINTENANCE FEE ON THE GROUNDS THAT THEY COLLECT REVENUES THAT**
26 **EXCEED THE FUNDS REQUIRED TO PROVIDE THE SERVICE.**

1 87. Petitioners refer to and incorporate by reference paragraphs 1 through 86 as though
2 set forth at length herein.

3 88. As hereinbefore alleged (A.1), there is a large class of over 11,069 residential water
4 customers in MMWD with 1" or 1½" meters as a result of fire sprinkler requirements, low
5 water pressure in the system, or merely by historical happenstance. The imposition of the fixed
6 meter-size rates of the CMF and the WMF collects revenues far in excess of the District's costs
7 of providing service.

8 89. The "adjustment" mechanism for larger meter residential customers with fire
9 suppression sprinklers created by the District at the last minute (MMWD Code §6.01.23): is not
10 self-executing and therefore unlawfully puts the burden on overcharged customers to ask for
11 reductions; unlawfully delegates legislative authority to the General Manager to determine
12 without objective criteria whether a fee reduction should be granted; arbitrarily excludes
13 thousands of large meter customers whose water usage/demand is no more than required for
14 a 5/8" meter; arbitrarily excludes tenants who hold service accounts with MMWD and make
15 up as much as 30% of the District's service population from the adjustment mechanism,
16 depriving them of procedural and substantive due process to request redress from MMWD;
17 arbitrarily limits the reduction to "one meter size" – which would be the ¾" rate for 1" meter
18 customers and the 1" rate for 1½" customers, but is still a grossly excessive charge; and makes
19 no provision whatever for reduction of the WMF for customers with 1" or 1½" meters
20 (regardless of the reason for the meter size), thereby depriving such customers of procedural
21 and substantive due process to request redress from MMWD.

22 90. As hereinbefore alleged (A.2), the CMF imposed upon the broad class of single family
23 residential customers collects excess revenues of about 17% more than the cost of services as
24 measured by annual water usage – equivalent to approximately \$2,805,067 of unlawful
25 revenue from residential fee payers annually at the outset and increasing over time. The CMF,
26 in part because it is a composite charge with a fixed "general benefit" component, collects
27 excess revenues of about 25% more than the cost of services as measured by annual water
28

usage – equivalent to approximately \$1,177,250 of unlawful revenue from residential fee payers annually (a disparity that also increases with yearly CMF fee hikes).

91. As hereinbefore alleged (A.3), MMWD’s expansive/expensive 10 year CIP embraces the goal of water system “resiliency” to reliably serve the District’s needs by the year 2040 (see MMWD “Water Resources Plan 2040,” RMC & Woodward & Curren Consultants [“WRP 2040”]). Driving the need for increased “resiliency” is the projected addition of about 20,000 new people to the District’s jurisdiction by 2040, which the District plans to address by adding another 2,000 AFY of new capacity to the system. None of the new capacity is attributable to existing customers, because their demand will continue declining due to additional conservation measures combined with State law legal constraints on water use and requirements for water efficiency. The new improvements to enhance capacity by 2,000 AFY have a capital cost of about \$133.8M and annual costs of \$10.4M. Those improvements provide no “service” to Petitioners and cannot be part of the “cost of service” for their rates on the CMF and WMF—resulting in collection of revenues greater than the cost of service by \$10.4M annually and eventually \$133.8M in the aggregate.

92. Respondents have breached their plain, ministerial, nondiscretionary, mandatory duty to comply with California Constitution Art. 13D §6(b)(1) by approving and imposing CMF and WMF fees that collect revenues which exceed the cost required to provide the property related service, as described above.

93. Petitioners hereby petition the Court for an alternative writ and a peremptory writ of mandate to compel performance by Respondents of their mandatory duties under Art. 13D §6(b)(1), and to prohibit collection of the fees that violate Art. 13D §6(b)(1).

94. Petitioners have no plain, speedy and adequate remedy in the ordinary course of law, other than the relief sought by this petition.

95. Respondents’ failure and refusal to perform their legal duties as hereinbefore described causes continuing injury to Petitioners and the Public. The continuing injury caused by Respondents’ failure to observe their legal duties cannot be adequately compensated by money damages and must be addressed by the relief sought herein.

B. WRIT OF MANDATE (CCP §1085) TO ENFORCE CALIFORNIA CONSTITUTION ART. 13D §6(b)(3), TO PROHIBIT RESPONDENTS FROM IMPOSITION AND COLLECTION OF THE CAPITAL MAINTENANCE FEE AND WATERSHED MAINTENANCE FEE ON PARCELS IN MMWD, ON THE GROUNDS THAT THE AMOUNTS OF THE FEES EXCEED THE PROPORTIONAL COST OF THE SERVICE ATTRIBUTABLE TO THE INDIVIDUAL PARCELS.

96. Petitioners refer to and incorporate by reference paragraphs 1 through 95 as though set forth at length herein.

97. As hereinbefore alleged (B.1), MMWD has for many years utilized a metric for allocating the proportional capital infrastructure attributable to a parcel based on the average annual water usage for the localized service area containing the parcel. MMWD maintains the data for average annual water use in over 300 localized service areas across the entire District, and this metric is used to calculate the “buy in” connection fee (capacity charge) for an individual parcel according to its probable water demand on the District’s infrastructure. The property owners connected to the MMWD system have an equitable interest in their respective shares of District capacity and infrastructure as measured by this metric. The CMF imposes on individual parcel owners fees for (what should be) their proportionate share of maintenance, replacement, and repairs of that same infrastructure. However, the meter-based metric of the CMF: charges only in grossly increasing inclining block rates based on the exponentially increasing maximum hydraulic capacity of meters; is irreconcilably incongruent with the smooth variations in capital allocation under the water usage metric; and charges individual parcel owners more than the water usage metric across every rate block for residential service, and especially in the block for 1” and 1½” meters.

98. MMWD’s use of an improper incongruent metric for allocating infrastructure costs is arbitrary, capricious, and irrational. Based solely on MMWD’s improper metric for proportionality, Petitioners estimate that over 70% of residential fee payers are individually charged more than the proportionate cost of service for infrastructure. The overcharges of

1 CMF revenues from the individual property owners violate of Art. 13D §6(b)(3) of the
2 California Constitution.

3 99. As hereinbefore alleged (B.2), the WMF uses the same meter-based improper metric
4 for capacity to allocate infrastructure costs. In addition, there is no partial reduction option for
5 1" or larger meters for the WMF.

6 100. MMWD's use of an improper incongruent metric for allocating infrastructure costs
7 to the WMF is arbitrary, capricious, and irrational. Based solely on MMWD's improper metric
8 for proportionality, Petitioners estimate that over 70% of residential fee payers are individually
9 charged more than the proportionate cost of service for watershed maintenance. The
10 overcharges of WMF revenues from the individual property owners violate of Art. 13D
11 §6(b)(3) of the California Constitution.

12 101. As hereinbefore alleged (B.3), the CMF and the WMF have "fire protection"
13 expenses embedded in their "cost of service" -- which then is allocated to individual property
14 owners paying these fees. However, "fire protection" service of the kind practiced by MMWD
15 (if the District has authority to perform this service at all) extends only to those properties
16 within a range of 1 or 2 miles of the perimeter of the District's Mt. Tam land, or at the extreme
17 the properties in the WUI (Wildland Urban Interface) while the majority of property owners in
18 the MMWD jurisdiction (not at risk from wildfire escaping the District's Mt. Tam acreage)
19 receive no service at all. In addition, there are over 5,000 residential properties in the MMWD
20 jurisdiction who don't use MMWD water (well users) that the District has not accounted for
21 and would reduce the proportionate cost of service if properly counted. Thus MMWD's charge
22 for fire protection services in the CMF and WMF all across the District's jurisdiction collects
23 more than the proportionate cost of service to over half of the individual properties, in
24 violation of Art. 13D §6(b)(3) of the California Constitution.

25 102. Respondents have breached their plain, ministerial, nondiscretionary, mandatory
26 duty to comply with California Constitution Art. 13D §6(b)(3) by approving and imposing
27 CMF and WMF fees that collect revenues which exceed the proportionate cost required to
28 provide the property related service, as described above.

1 103. Petitioners hereby petition the Court for an alternative writ and a peremptory writ
2 of mandate to compel performance by Respondents of their mandatory duties under Art. 13D
3 §6(b)(3), and to prohibit collection of the fees that violate Art. 13D §6(b)(3).

4 104. Petitioners have no plain, speedy and adequate remedy in the ordinary course of
5 law, other than the relief sought by this petition.

6 105. Respondents' failure and refusal to perform their legal duties as hereinbefore
7 described causes continuing injury to Petitioners and the Public. The continuing injury caused
8 by Respondents' failure to observe their legal duties cannot be adequately compensated by
9 money damages and must be addressed by the relief sought herein.

10
11 **C. WRIT OF MANDATE (CCP §1085) TO ENFORCE CALIFORNIA CONSTITUTION ART.**
12 **13D §6(b)(5), TO PROHIBIT RESPONDENTS FROM IMPOSITION AND COLLECTION**
13 **OF THE CAPITAL MAINTENANCE FEE AND WATERSHED MAINTENANCE FEE ON**
14 **PARCELS IN MMWD, ON THE GROUNDS THAT THEY ARE CHARGES FOR**
15 **"GENERAL GOVERNMENTAL SERVICES."**

16 106. Petitioners refer to and incorporate by reference paragraphs 1 through 105 as though
17 set forth at length herein.

18 107. As hereinbefore alleged (C.1), MMWD uses the CMF and the WMF to pay for "fire
19 protection services" which the District claims is for the benefit of everyone. That is, regardless
20 of the geographic reach of the District's fire protection services, the service is available to the
21 public at large in substantially the same manner as it is to property owners.

22 108. As hereinbefore alleged (C.2), the WMF includes a flat base charge for the District's
23 general governmental service of "stewardship" of the watershed – activities that maintain the
24 ecosystems of the District's publicly accessible lands, enhance biodiversity, reintroduce native
25 species, enhance beauty and accessibility, all for service to the public at large in substantially
26 the same manner as it is available to District property owners.

109. The inclusion of general government services charges in the CMF and the WMF are in breach of the District's plain, ministerial, nondiscretionary, mandatory duty to comply with California Constitution Art. 13D §6(b)(5).

110. Petitioners hereby petition the Court for an alternative writ and a peremptory writ of mandate to compel performance by Respondents of their mandatory duties under Art. 13D §6(b)(5), and to prohibit collection of the fees that violate Art. 13D §6(b)(5).

111. Petitioners have no plain, speedy and adequate remedy in the ordinary course of law, other than the relief sought by this petition.

112. Respondents' failure and refusal to perform their legal duties as hereinbefore described causes continuing injury to Petitioners and the Public. The continuing injury caused by Respondents' failure to observe their legal duties cannot be adequately compensated by money damages and must be addressed by the relief sought herein.

D. WRIT OF MANDATE (CCP §1085) TO ENFORCE CALIFORNIA CONSTITUTION ART. 13D §6, TO PROHIBIT RESPONDENTS FROM IMPOSITION AND COLLECTION OF THE CAPITAL MAINTENANCE FEE AND WATERSHED MAINTENANCE FEE ON PARCELS IN MMWD, ON THE GROUNDS THAT THERE IS NO LEGAL AUTHORIZATION FOR MMWD TO CHARGE FOR FIRE PROTECTION OR WATERSHED PROTECTION.

113. Petitioners refer to and incorporate by reference paragraphs 1 through 112 as though set forth at length herein.

114. As hereinbefore alleged (D.1), MMWD has never been given authorization by LAFCO to activate and provide the municipal service of "fire protection." In addition, the jurisdictions (10 Cities / Towns and the County) in which MMWD claims to have extended the reach of its service by virtue of its wildfire prevention activities in the Mt. Tam preserve, have never authorized the overlapping fire protection authority of MMWD. Therefore MMWD's purported provision of fire protection services, and charges for fire protection services in the CMF and WMF, are *ultra vires* and void.

1 115. As hereinbefore alleged (D.2), there is no statutory authorization for MMWD as a
2 municipal water district to impose a fee for “watershed management.” Therefore the WMF is
3 *ultra vires* and void.

4 116. No service whatsoever is provided to property owners in MMWD by the imposition
5 of unlawful and void fees that have no legal foundation. MMWD’s imposition of these
6 unlawful fees as property related charges in the water bills violates Art. 13D §6 in all its
7 provisions.

8 117. The inclusion of unlawful fire protection charges in the CMF and the WMF, and the
9 unlawful WMF charge are in breach of the District’s plain, ministerial, nondiscretionary,
10 mandatory duty to comply with California Constitution Art. 13D §6.

11 118. Petitioners hereby petition the Court for an alternative writ and a peremptory writ
12 of mandate to compel performance by Respondents of their mandatory duties under Art. 13D
13 §6, and to prohibit collection of these fees that violate Art. 13D §6.

14 119. Petitioners have no plain, speedy and adequate remedy in the ordinary course of
15 law, other than the relief sought by this petition.

16 120. Respondents’ failure and refusal to perform their legal duties as hereinbefore
17 described causes continuing injury to Petitioners and the Public. The continuing injury caused
18 by Respondents’ failure to observe their legal duties cannot be adequately compensated by
19 money damages and must be addressed by the relief sought herein.

20
21 **E. WRIT OF MANDATE (CCP §1085) TO ENFORCE CALIFORNIA CONSTITUTION ART.**
22 **13D §6(c), TO PROHIBIT RESPONDENTS FROM IMPOSITION AND COLLECTION OF**
23 **THE CAPITAL MAINTENANCE FEE AND WATERSHED MAINTENANCE FEE ON**
24 **PARCELS IN MMWD, ON THE GROUNDS THAT MMWD FAILED TO HAVE THE**
25 **CHARGES APPROVED BY AN ELECTION.**

26 121. Petitioners refer to and incorporate by reference paragraphs 1 through 120 as though
27 set forth at length herein.

122. As hereinbefore alleged (E), Art. 13D §6(c) requires an election and approval by a majority vote for property related fees, except for fees for sewer, **water** and refuse collection services. Petitioners allege that both “watershed management” and “fire protection” services are distinct and separate from the activity of “water service” excluded from the elections requirement for new / increased property related fees. The District’s failure and refusal to conduct elections for fees for fire protection services and watershed management was in violation of Art. 13D §6(c).

123. Petitioners hereby petition the Court for an alternative writ and a peremptory writ of mandate to compel performance by Respondents of their mandatory duties under Art. 13D §6(c), and to prohibit collection of these fees that violate Art. 13D §6(c).

124. Petitioners have no plain, speedy and adequate remedy in the ordinary course of law, other than the relief sought by this petition.

125. Respondents’ failure and refusal to perform their legal duties as hereinbefore described causes continuing injury to Petitioners and the Public. The continuing injury caused by Respondents’ failure to observe their legal duties cannot be adequately compensated by money damages and must be addressed by the relief sought herein.

F. WRIT OF MANDATE (CCP §1085) TO ENFORCE CALIFORNIA CONSTITUTION ART. 13D §6(a), TO PROHIBIT RESPONDENTS FROM IMPOSITION AND COLLECTION OF THE CAPITAL MAINTENANCE FEE AND WATERSHED MAINTENANCE FEE ON PARCELS IN MMWD, ON THE GROUNDS THAT MMWD DID NOT FOLLOW THE MANDATED PROCEDURES FOR FEE ADOPTION.

126. Petitioners refer to and incorporate by reference paragraphs 1 through 125 as though set forth at length herein.

127. As hereinbefore alleged (F), the Art. 13D, §6(a) procedures for adoption of a property related fee require 45 days advance Notice to each parcel owner and tenant of the calculated **amount** of the fee applicable to the parcel, the **basis** upon which the amount of the fee was calculated, and the **reason** for the fee or charge. MMWD breached its duties to

1 provide the “reason” when it claimed in its Notice that the fees were based on a 10 year CIP,
2 because: that CIP was not used in the District’s fee studies; the 10 year CIP was only an
3 informal draft by staff that had no official approval or legal existence as a plan or otherwise;
4 the District made clear its approach to first approve the CMF fee to create a known quantity of
5 revenues and then subsequently determine the projects and costs of the CIP to back into the
6 revenues; the CIP claimed to be the “reason” for the CMF was approved 3 weeks after the
7 CMF was adopted, and in the mean time the CIP had gained \$9M in project costs between its
8 draft status before adoption of the CMF and its final approved form after adoption of the
9 CMF.

10 128. MMWD breached its duties as to disclosing the “amount” of the fees, in particular as
11 to residential meters of 1” or larger size, when it waited until after mailing the Prop 218 Notice
12 to reveal and adopt Ordinance No. 442; this Ordinance permits some fee payers to apply for
13 capital maintenance fee reductions of one meter size that can be approved at the discretion of
14 the General Manager -- MMWD Code §6.01.23. Knowing that it was initiating charges of an
15 incorrect and excessive amount, the District has attempted to shift the duty of determining the
16 correct amount to the fee payer after adoption of the new fees, by requiring an application for
17 reduced fees with no certain outcome.

18 129. Then MMWD changed the “basis” for the fee structure by approving Policy No. 52
19 on June 27 after the May 28 approval of the fees, to give special breaks, fee deferrals and
20 payback plans to local agencies on an unequal and discriminatory basis vis-a-vis private
21 property owners.

22 130. The procedures and 45 day Notice for the fees should have included and disclosed:
23 an approved official 10 year CIP as the bona fide reason for the fees, the adjustments in
24 amounts of the fees for large residential meters, and an up-front disclosure of the final basis of
25 the fees including which fee payers would get special privileges and which would not.
26 MMWD’s egregious failure to follow the required procedures was a violation of Art. 13D,
27 §6(a).

1 131. Petitioners hereby petition the Court for an alternative writ and a peremptory writ
2 of mandate to compel performance by Respondents of their mandatory duties under Art. 13D
3 §6(a), and to prohibit collection of these fees that violate Art. 13D §6(a).

4 132. Petitioners have no plain, speedy and adequate remedy in the ordinary course of
5 law, other than the relief sought by this petition.

6 133. Respondents' failure and refusal to perform their legal duties as hereinbefore
7 described causes continuing injury to Petitioners and the Public. The continuing injury caused
8 by Respondents' failure to observe their legal duties cannot be adequately compensated by
9 money damages and must be addressed by the relief sought herein.

10
11 **G. WRIT OF MANDATE (CCP §1085) TO ENFORCE GOVERNMENT CODE §6613, TO**
12 **COMPEL RESPONDENTS TO PERFORM THEIR MANDATORY STATUTORY DUTIES**
13 **FOR MANAGEMENT, RECORD KEEPING, AND PUBLIC DISCLOSURE IN RESPECT**
14 **TO "CONNECTION FEES"/CAPACITY CHARGES COLLECTED ANNUALLY BY**
15 **MMWD; AND TO PROHIBIT COLLECTION OF CMF FEES THAT COLLECT MORE**
16 **REVENUES THAN THE FUNDS REQUIRED TO PROVIDE THE PROPERTY RELATED**
17 **SERVICE AFTER DUE CREDIT IS APPLIED FOR CAPACITY CHARGE FUNDING OF**
18 **INFRASTRUCTURE (ART. 13D §(b)(1)).**

19 134. Petitioners refer to and incorporate by reference paragraphs 1 through 133 as though
20 set forth at length herein.

21 135. As hereinbefore alleged (G), on a persistent and ongoing basis MMWD ignores and
22 violates its statutory duties under Gov. Code §66013 to account for its capacity charges, how
23 they have been expended, and how they are allocated to public improvements in combination
24 with other funding sources. This statutory violation deprives the public of essential
25 information to ensure the accountability of MMWD in its management of capacity charges and
26 its expenditures on capital improvements generally. This violation is independently actionable
27 from claims related to the CMF and WMF.

1 136. Petitioners are informed and believe, and thereon allege, that the annual stream of
2 roughly \$1M of capacity charges taken in by MMWD is not applied as a credit or contribution
3 to the cost of public improvements as required by law. If the approximately \$1M of capacity
4 charge revenues were lawfully credited the “cost of service” for the CMF would be \$1M less,
5 and therefore the current CMF annually collects revenues in excess of the funds required to
6 provide the property related service by this amount of approximately \$1M, in violation of Art.
7 13D §6(b)(1).

8 137. Petitioners hereby petition the Court for an alternative writ and a peremptory writ
9 of mandate to compel performance by Respondents of their mandatory duties under
10 Government Code §66013 and Art. 13D §6(b)(1), and to prohibit collection of these fees that
11 violate Art. 13D §6(b)(1).

12 138. Petitioners have no plain, speedy and adequate remedy in the ordinary course of
13 law, other than the relief sought by this petition.

14 139. Respondents’ failure and refusal to perform their legal duties as hereinbefore
15 described causes continuing injury to Petitioners and the Public. The continuing injury caused
16 by Respondents’ failure to observe their legal duties cannot be adequately compensated by
17 money damages and must be addressed by the relief sought herein.

18
19 **H. WRIT OF MANDATE (CCP §1085) TO ENFORCE CALIFORNIA CONSTITUTION**
20 **ART. 10 §2 AND PROHIBIT ENFORCEMENT OF THE ARBITRARY, CAPRICIOUS AND**
21 **IRRATIONAL APPROVAL OF FEES THAT OPERATE TO ENHANCE FIRE DANGER**
22 **FOR RESIDENTIAL PROPERTIES AND INCENTIVIZE WATER WASTE.**

23 140. Petitioners refer to and incorporate by reference paragraphs 1 through 139 as though
24 set forth at length herein.

25 141. As hereinbefore alleged (H), the District’s employment of meter-based inclining
26 block rates for the CMF and WMF creates an extraordinary and unlawfully excessive charge
27 for residential homeowners who might up-size their meters for the introduction of fire
28

sprinkler systems. This dis-incentive for installation of fire sprinklers enhances fire risk and danger to the residential property owners in the MMWD jurisdiction.

142. Additionally, the fixed meter-based charges force residential property owners to pay for more “capacity” in the water system than they currently or normally use. Having paid for their potential draw on the system via the CMF and WMF, customers are de facto encouraged to use more water up to the capacity they are already charged for. At the very least, this fee structure undermines water conservation policy and financial incentives/penalties pegged to higher usage. The encouragement of water waste is contrary to and prohibited by Art. 10 §2 of the California Constitution, as well as the legislation in AB 1688 & SB 606 that mandate ever more stringent water conservation policies while prohibiting policies that encourage water waste.

143. The District’s adoption of fees that enhance fire danger and encourage water waste is arbitrary, capricious, irrational, and an abuse of discretion.

144. Petitioners hereby petition the Court for an alternative writ and a peremptory writ of mandate to prohibit collection of these fees that enhance fire danger, encourage water waste, and violate Art. 10 §2 prohibiting water waste and the legislation in AB 1688 & SB 606 that mandate ever more stringent water conservation policies while prohibiting policies that encourage water waste.

145. Petitioners have no plain, speedy and adequate remedy in the ordinary course of law, other than the relief sought by this petition.

146. Respondents’ failure and refusal to perform their legal duties as hereinbefore described causes continuing injury to Petitioners and the Public. The continuing injury caused by Respondents’ failure to observe their legal duties cannot be adequately compensated by money damages and must be addressed by the relief sought herein.

CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF

147. Petitioners refer to and incorporate by reference paragraphs 1 through 146 as though set forth at length herein.

1 148. In the alternative to the granting of relief by writ of mandate, Plaintiffs seek a
2 judgment for declaratory and injunctive relief as follows.

3 149. An actual controversy has arisen and now exists between Plaintiffs and Defendants
4 concerning their respective rights and duties pertaining to the Defendant's adoption and
5 imposition of Capital Maintenance Fees (CMFs) and Watershed Management Fees (WMFs).

6 150. Plaintiffs contend that:

7 A. The revenues derived from the fees exceed the funds required to provide the property
8 related service, in violation of Art.13D §6(b)(1), particularly in that (1) residential property
9 owners with 1" or larger meters are grossly and intentionally overcharged by the District; (2)
10 the broad class of all residential water users is overcharged on the CMF and the WMF; and (3)
11 the current residential water users are improperly charged for a program of capital
12 improvements designed to create new capacity for future residents of the MMWD jurisdiction.

13 B. The charges for the CMF and the WMF are greater than the proportionate cost of service
14 to individual parcels in violation of Art. 13D §6(b)(3): (1) Though the District has for many
15 years used a refined metric for capacity based on annual water use in localized service areas,
16 the CMF uses an inaccurate improper meter-size metric for capacity that is incongruent and
17 overcharges; (2) the WMF, though a composite fee, has the same deficiency that makes it
18 disproportionate to cost of service; and (3) The embedded fire protection charges in the CMF
19 and WMF (if allowable at all) extend "service" (protection) only to residences in a 1 to 2 mile
20 perimeter of MMWD's lands or at best the WUI (Wildland Urban Interface), such that charge
21 to more than half of all water users outside those special risk areas are greater than the
22 proportionate cost of service their individual parcels.

23 C. Petitioners allege that "fire protection services" and "watershed management" paid for
24 from the CMF and WMF are "general governmental services" prohibited by Art. 13D §(b)(5).

25 D. Petitioners allege that there is no legal authorization for "fire protection services" or
26 charges for such services in the CMF and WMF. Further, there is no statutory authorization for
27 a municipal water district to charge fees for "watershed management."
28

1 E. The District should have conducted elections on the CMF and WMF because there is no
2 exemption from elections in Art. 13D §6(c) for “watershed management” or for “fire protection
3 services” embedded in both fees.

4 F. The District failed to follow the required procedures for enacting a property related fee,
5 and did not provide the reason, amount and basis for the fees as required by Art. 13D §6(a).

6 G. The District has breached its mandatory duties for accounting for capacity charges
7 required by Gov. Code §66013, and has failed to account for capacity charge revenues that
8 should be allocated to infrastructure and reduce the fees charged in the CMF and WMF.

9 H. The District’s arbitrary and irrational use of meter-size for CMF and WMF charges has
10 the pernicious effect of enhancing fire risk and discouraging conservation, contrary to public
11 policy and Art. 10 §2 of the CA Constitution.

12 151. Whereas, Defendants dispute each and all of Plaintiffs’ contentions, and Defendants
13 assert that they have fully complied and continue to comply with all of their legal duties.

14 152. Plaintiffs desire a judicial determination of their rights and duties, and a declaration
15 as to whether Defendants have breached their legal duties as alleged herein, and whether the
16 CMF and WMF are legally void and invalid. A judicial declaration is necessary and
17 appropriate at this time, under the facts and circumstances hereinbefore alleged, in order that
18 the rights and duties of Plaintiffs and Defendants may be ascertained and finally determined
19 by the Court.

20 153. Plaintiffs and other ratepayers will presently and continuing into the future suffer
21 irreparable harm from MMWD’s ongoing imposition and collection of legally invalid fees for
22 the CMF and WMF. Plaintiffs therefore seek preliminary and permanent injunctive relief from
23 the Court, in such form as the Court may allow, to preserve the proceeds and revenues of
24 disputed unlawfully collected fees, to enjoin imposition and collection of unlawful fees, and to
25 compel credits or returns of unlawfully collected fee revenues.

1 WHEREFORE, PETITIONERS/PLAINTIFFS PRAY FOR RELIEF:

2
3 1. As to each claim for Writ of Mandate, issuance of a Judgment ordering the entry of a
4 Writ of Mandate: commanding MMWD to cease imposition and collection of the CMF and
5 WMF; prohibiting further imposition and collection of the CMF and WMF; commanding
6 MMWD to rescind approval of the CMF and WMF, and remove said fees from the MMWD
7 code; commanding an accounting of the fee revenues from the CMF and WMF obtained by
8 MMWD, including an accounting of the expenditures of the fee revenues to date; commanding
9 that the unlawfully obtained fee revenues, as determined by the Court, be credited or refunded
10 by MMWD to Petitioners and customers of MMWD.

11 2. As to the claim for Writ of Mandate to compel compliance with Gov. Code §66013,
12 issuance of a Writ of Mandate commanding MMWD to comply with each and every provision
13 of Gov. Code §66013 for FY 2019 and all subsequent fiscal years, and to supply Petitioners and
14 the public with the accounting information required by Gov. Code §66013.

15 3. As to Plaintiffs' claim for declaratory and injunctive relief: the entry of a Judgment
16 declaring the rights and duties of the parties in accordance with each and all of the contentions
17 by Plaintiffs on these disputed issues; issuance of such preliminary injunctive relief as may be
18 requested and granted by the Court, and issuance of a permanent injunction commanding
19 MMWD to cease imposition and collection of the CMF and WMF; prohibiting further
20 imposition and collection of the CMF and WMF; commanding MMWD to rescind approval of
21 the CMF and WMF, and remove said fees from the MMWD code; commanding an accounting
22 of the fee revenues from the CMF and WMF obtained by MMWD, including an accounting of
23 the expenditures of the fee revenues to date; commanding that the unlawfully obtained fee
24 revenues, as determined by the Court, be credited or refunded by MMWD to Petitioners and
25 customers of MMWD.

26 4. On all claims, for an award of attorneys' fees to Petitioners/Plaintiffs under the Private
27 Attorney General theory (CCP §1021.5), or such other grounds as the Court may deem proper.

28 5. For costs of suit.

1 6. For such other relief as the Court may deem proper.
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3 MCNEILL LAW OFFICES

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6 Dated: August 14, 2019
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