

CLASS ACTION GOVERNMENT CLAIM AND PROTEST OF PAYMENT

TO: MARIN MUNICIPAL WATER AGENCY (“MMWD”)

FROM: Gloria Rashti, Doug Kelly, and Mari Robinson, individually and on behalf of a class of persons similarly situated defined as (1) residential customers of the Marin Municipal Water District (“MMWD”); (2) who paid some or all of the Capital Maintenance Fee (“CMF”) or Watershed Management Fee (“WMF”) they were billed since July of 2019. Such petitioners, plaintiffs, and class representatives may be contacted through counsel Walt McNeill, 3330 Churn Creek Road, Suite D2, Redding, CA 96002; S. Chandler Visser, 268 Bush Street, #4500, San Francisco, CA 94104; and/or Matthew J. Witteman, 130 Petaluma Avenue, Suite 2H, Sebastopol, CA 95472.

ADDRESS

FOR NOTICE: Walt McNeill, 3330 Churn Creek Road, Suite D2, Redding, CA 96002; S. Chandler Visser, 268 Bush Street, #4500, San Francisco, CA 94104; and/or Matthew J. Witteman, 130 Petaluma Avenue, Suite 2H, Sebastopol, CA 95472.

DATE, PLACE,
FACTS:

In general, MMWD has since at least July of 2019 if not before, imposed a CMF and/or WMF on an ongoing basis in violation of Article XIII D (6) of the California Constitution and applicable law. The basis for this claim has been set forth in the Petitions for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (“Petition”), Marin Superior Court No. CIV 1903160. A draft Amended Petition is attached here as Exhibit A and incorporated herein by this reference.

INJURY

SUSTAINED: The imposition of excessive CMF and WMF as set forth in the attached draft Amended Petition, Exhibit A.

PUBLIC
EMPLOYEES

INVOLVED: MMWD’s involvement in, and the opposition of the named class representatives and others to MMWD’s actions, have been publicized and are well known to MMWD, including the

identity of all public employees involved in MMWD's conduct. Without limiting the generality of the foregoing, the following public employees appear to have been centrally involved in the alleged actions: MMWD General Manager for relevant time periods, and MMWD's Board of Directors,

AMOUNT OF
DAMAGES,

CALCULATION: The amount claimed by the class is \$25,000 or more, and would therefore exceed the jurisdictional limitation of a limited civil case. The damages calculations are set forth generally in the draft Amended Petition (Exhibit A, pp. 54 *et seq.*), and alternately seek a refund from the date such charges were first levied or a date to be determined (based on MMWD's subsequent levies and continuing violations or otherwise), of either/or 1) that proportion of the CMF levied on each parcel of real property that is in excess of the proportional share of the CMF collections attributable to that parcel based on the property's water use, since July 2019, 2)) that proportion of the WMF in excess of the proportional share of the WMF collections attributable to that parcel based on the property's water use, since July 2019; 3) the WMF flat fee for general governmental services in the amount of \$6.29 per parcel, or an amount to be established, 4) all the CMF, and 5) all the WMF. Petitioners, plaintiffs, class representatives, and the class will seek to obtain records and information from MMWD to determine the exact amount of refunds due, which MMWD has the burden to demonstrate are ascertainable.

DATED: 7/9/2020



Matthew Wittman
ATTORNEY FOR THE CLASS

EXHIBIT A

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

Case No. Civ. 1903160

COALITION OF SENSIBLE
TAXPAYERS,

DOUG KELLY,

GLORIA RASHTI,

MARI ROBINSON,

ROBERT ROSENBLUTH,

PETITIONERS/PLAINTIFFS, on
their own behalf and on behalf of all
persons similarly situated,

-vs.-

MARIN MUNICIPAL WATER
DISTRICT, AND THE BOARD OF
DIRECTORS OF THE MARIN

CLASS ACTION

**I. 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.**

1 MUNICIPAL WATER DISTRICT SOLELY
2 IN THEIR REPRESENTATIVE
3 CAPACITIES, AND

4 DOES 1 THROUGH 100,

5 RESPONDENTS/DEFENDANTS

**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).**

**II. COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

III. CLASS REFUND CLAIMS

THE PARTIES

- 16 1. Petitioner/Plaintiff (hereafter “Petitioner(s)”) Coalition of Sensible Taxpayers, aka “CO\$T”
17 and referenced herein by such acronym, is a California domestic nonprofit corporation
18 representing the interests of Marin County, CA taxpayers and essential service ratepayers.
19 CO\$T’s network of volunteers and supporters live throughout Marin County, and most are
20 within the boundaries of the Respondent/Defendant (hereafter just “Respondent”) Marin
21 Municipal Water District, aka “MMWD” or simply the “District,” and said participants in
22 CO\$T are water customers of MMWD. CO\$T is a non-partisan organization with the
23 mission to: 1) Keep local taxes and fees on housing and basic services affordable; 2)
24 Encourage officials to prioritize spending on the uses most important to taxpayers; 3)
25 Improve transparency and fiscal responsibility at local agencies and districts; 4) Educate
26 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.
- 27 2. Petitioner Gloria Rashti is an individual living in a residence of which she is a legal owner,
28 located in Mill Valley, CA, and she is a water service customer of Respondent MMWD. The

1 water service to Petitioner Rashti's residence passes through a 1" size meter. Her residence
2 does not have fire suppression sprinklers installed. Her water meter was not installed in
3 recent years, she has no knowledge of there being any specific purposes for the choice of
4 size of the water meter other than the convenience of the builder and the past practices of
5 MMWD allowing such meters, and for past years and continuing through the present she is
6 an extremely low water user below the average usage of the District generally and the
7 average use of the local service area where her residence is located. Petitioner Rashti has
8 been and will be affected as a water service customer by the increased water rates adopted
9 by MMWD in Ordinance No. 442 (and as subsequently modified) which became effective
10 July 1, 2019. Despite her relatively low water use, Petitioner Rashti is not eligible for a
11 reduction in the amount of the CMF or WMF, either as allowed by Ordinance 442 or by
12 Ordinance 444.

13 3. Petitioner Doug Kelly is an individual living in a residence of which he is a renter, located
14 in San Anselmo, CA, and he is a water service customer of Respondent MMWD. The water
15 service to Petitioner Kelly's residence passes through a 5/8" size meter. His residence does
16 not have fire suppression sprinklers installed. His water meter was not installed in recent
17 years, he has no knowledge of there being any specific purposes for the choice of size of the
18 water meter other than the convenience of the builder and the past practices of MMWD
19 allowing such meters, and for past years and continuing through the present he is a low
20 water user below the average usage of the District generally. Petitioner Kelly has been and
21 will be affected as a water service customer by the increased water rates adopted by
22 MMWD in Ordinance No. 442 (and as subsequently modified) which became effective July
23 1, 2019. Despite his relatively low water use, Petitioner Kelly is not eligible for a reduction
24 in the amount of the CMF or WMF he is charged, either as allowed by Ordinance 442 or by
25 Ordinance 444.

26 4. Petitioner Mari Robinson is an individual living in a residence of which she is a legal
27 owner, located in Mill Valley, CA, and she is a water service customer of Respondent
28 MMWD (with the account having been set up in the name of her husband Richard
Robinson). The water service to Petitioner Robinson's residence passes through a 1" size
meter. Her residence does not have fire suppression sprinklers installed. Her water meter

1 was not installed in recent years, she has no knowledge of there being any specific purposes
2 for the choice of size of the water meter other than the convenience of the builder and the
3 past practices of MMWD allowing such meters. Petitioner Robinson has been and will be
4 affected as a water service customer by the increased water rates adopted by MMWD in
5 Ordinance No. 442 (and as subsequently modified) which became effective July 1, 2019.
6 Despite her relatively low water use, Petitioner Robinson is not eligible for a reduction in
7 the amount of the CMF or WMF, either as allowed by Ordinance 442 or by Ordinance 444.

8 5. Petitioner Robert Rosenbluth is an individual living in a residence of which he is a legal
9 owner, located in Tiburon, CA, and he is a water service customer of Respondent MMWD.
10 The water service to Petitioner Rosenbluth's residence passes through a 1½" size meter. His
11 residence does have fire suppression sprinklers installed. His water meter was not installed
12 in recent years, he has no knowledge of there being any specific purposes for the specific
13 choice of the 1½" size of the water meter other than the convenience of the builder and the
14 past practices of MMWD allowing such meters; he is aware that the meter should be 1" in
15 size to allow for flows to support the fire sprinkler system. For past years and continuing
16 through the present he is an extremely low water user below the average usage of the
17 District generally and the average use of the local service area where his residence is
18 located. If not for the need to have a meter at least 1" in size for fire sprinkler support, his
19 water use would be more than adequately satisfied by a 5/8" meter. Petitioner Rosenbluth
20 has been and will be affected as a water service customer by the increased water rates
21 adopted by MMWD in Ordinance No. 442 (and as subsequently modified) which became
22 effective July 1, 2019. Despite his relatively low water use, Petitioner Rosenbluth is not
23 eligible for a reduction in the amount of the CMF or WMF, either as allowed by Ordinance
24 442 or by Ordinance 444.

25 6. Respondent/Defendant Marin Municipal Water District is a California Municipal Water
26 Agency, duly established and existing as a local agency under California statutory law,
27 governed by Division 20 of the California Water Code and "Proposition 218" (adding
28 Articles 13C and 13D to the California Constitution), among other provisions of California
law. Respondents BOARD OF DIRECTORS OF THE MARIN MUNICIPAL WATER
DISTRICT are named herein only in their representative capacities as the governing

1 legislative body of Respondent MMWD, so as to make the BOARD subject to the
2 jurisdiction and power of this Court to provide affirmative relief as to Respondent MMWD
3 as Petitioners have prayed for herein.

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

17 **INTRODUCTION, NATURE OF CLAIMS PRESENTED, RELIEF SOUGHT.**

18 **INTRODUCTION**

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

27 9. Petitioners/Plaintiffs also seek to have the improperly imposed fees refunded in whole or in
28

part.

10. 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, charges more than the proportional cost of service to the parcels. The District uses meters of between 5/8” and 8.” Most residential meters are 5/8”, which some as large as 1 ½”, while all meters over 1 ½” are assumed to be commercial. The amount of water which may pass through a meter varies in proportion to the square of the radius of the pipe size, which means that the maximum water flow increases much faster than the meter size. For example, a ¾” meter is only 1/8” larger in diameter than a 5/8” meter, but will allow 50% more water to flow through it. The Petitioners represent residential customers of the District with meters of 1½” or less. For simplicity in the discussion, the residential meters larger than 5/8” are referred to as “large” meters.
11. The District increases the CMF and WMF in proportion to the meter size, but the amount of water used by residential customers is often unrelated to meter size, as large meters were often installed for reasons other than expected volume of water use. The District CMF and WMF fees are justified by the burden water use places on the system, but meter size is a poor surrogate for water use. The result is that while property owners across the whole spectrum of usage are overcharged, the most egregious examples occur with property owners who happen to have large 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.
12. Close examination reveals serious legal deficiencies in the way in which the CMF and WMF were adopted, 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. CMF Illegally Imposed and should be rescinded; is generally unfair to Residential parcels with large meters and the cost is disproportionately allocated based on meter size. Art. 13D, §6(b)(1), (3)**

1 **B. WMF Overcharges Large Residential Meters, Includes General Governmental Services**
2 **and Lacks Statutory Authority**

3 **C. Fire Protection is a General Governmental Service and Has No Legal Basis**

4 **D. The CMF and WMF Overcharge for Future Capacity**

5 **E. Failure to conduct elections – CMF and WMF. Art. 13 D, §6(c).**

6 **F. Failure to follow mandated procedures for fee adoption – CMF and WMF. Art. 13D, §6(a).**

7 **G. Breach of mandatory statutory duties under Gov. Code §66013(c)(d) - CMF.**

8 **RELIEF SOUGHT**

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

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

20 15. Full or partial refund of CMF and WMF fees paid:

- 21 a. Full refund of all CMF and WMF fees paid because the fees were not imposed
- 22 in accordance with applicable legal requirements.
- 23 b. Partial refund of the CMF to those persons who paid more than their
- 24 appropriate proportional share of this fee.
- 25 c. Partial refund of that portion of the WMF based on water meter size to those
- 26 persons who paid more than their appropriate proportional share of this fee.
- 27 d. Partial refund of that portion of the WMF that is imposed to finance general
- 28 governmental services.

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

10 **BACKGROUND AND FACTUAL ALLEGATIONS IN SUPPORT OF CLAIMS**

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

19 18. MMWD is the first and the **oldest** municipal water district in California, formed under and
20 still governed by the Municipal Water District Law of 1911, Water Code §71000 et. seq.
21 Over the course of 108 years the district has grown to provide water service to a population
22 of about 190,000 people. (See MMWD website May 2020, "About.") The District has about
23 61,900 active service connections, of which 55,700 are residential and 6,200 are non-
24 residential (commercial, institutional, irrigation). Attached as "Ex. 2,"¹ and incorporated by
25 reference herein, is an MMWD chart which shows the meter sizes for 60,558 connections,
26 presumably the number of connections at the time the chart was prepared. If the
27 commercial percentage from the website are applied to the meters included in Exhibit 2,
28

¹Labeled "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.

1 then 6,066 of the meters in that exhibit were commercial. If it is assumed that all of the
2 meters in Exhibit 2 of 2" or larger, a total of 875 meters, were commercial, then there were
3 5,191 commercial meters of 1 ½" or less of the total of 59,683 meters less than 2", with the
4 remaining 54,492 meters less and 2" being residential. Even if the 5,191 commercial meters
5 of 1 ½" are less are heavily weighted towards the larger sizes, it is probable that of the
6 approximately 18,000 meters between ¾" and 1 ½", more than 15,000 are residential.

- 7 **19.** When a new customer seeks to connect a residence to a water system, the water company
8 imposes a charge, called a capacity charge or connection fee, based on the cost of the
9 existing water system infrastructure expected to be devoted to supplying that house with
10 water. In many water districts the capacity charge is based on the meter size the new user
11 wants to install, which gives the new customer an incentive to install the smallest meter
12 which will meet the needs of the new house. (See Ex. 4, p.2) MMWD is unusual in that the
13 capacity charge has never been based on meter-size. In fact, until it adopted a "service
14 charge" for administrative costs in 1993, the District did not have any charges that was
15 more for large meters than small ones. The result was that for most of its existence a fair
16 number of meters were installed which were larger than needed because there was no
17 disincentive to do so.
- 18 **20.** Until 1993 the water rates charged by MMWD had only two elements, "commodity charge"
19 based on quantity of water consumed; and the residential "connection fee" (aka "capacity
20 charge") to pay for capital infrastructure, based on the **average annual water use** in the
21 "service area" where the property is located.
- 22 **21.** The MMWD program of capacity charges based on average annual usage in localized
23 service areas means that the capacity charge much more closely corresponds to the
24 expected burden the property will place on the system than a capacity charge based on
25 meter size, which puts almost all residential properties in the same category because
26 most houses only need a 5/8" meter. The result is that there is a high degree of variation
27 among MMWD residential capacity charges. This type of capacity charge program is
28 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. Legally the capacity charge

1 **“buy-in” of allocable infrastructure value for individual parcel water connections**
2 **provides the “base” for any additional charge to allocate the amount/% of costs to each**
3 **individual parcel owner for “maintenance” of the infrastructure.**

4 22. MMWD’s aforescribed capacity charge scaled to average annual water usage is unusual
5 in that it costs the customer no more a large residential meter than a small one. It essentially
6 makes the meter size irrelevant. From 1912 to 1993 the financial consequences to a
7 residential builder or residential property owner from installing a large size water meter
8 (1½” for example) as compared to the minimum size of 5/8” was the marginal cost of the
9 plumbing hardware; fees or charges by the District were not a factor in the selection of
10 meter size for that span of over 80 years. Beginning in 1993 there was a relatively small
11 financial consequence from the bi-monthly water “service charge” scaled to meter size.

12 23. The impact of meter size of water rates increased in January of 2016 when the District
13 started collecting a bi-monthly “Watershed Management Fee” (“WMF”). The WMF has a
14 fixed amount portion based on the provision of general governmental services, and a
15 portion that is scaled to meter size that increased the impact of meter size.

16 24. A dramatic change in the cost impact of a large meter occurred effective July 1, 2019 when
17 the District simultaneously increased the WMF **and** decided to greatly increase its
18 revenues for capital maintenance by imposing a new meter size dependent bi-monthly
19 “Capital Maintenance Fee” or “CMF.” To the knowledge of Petitioners, **MMWD is unique**
20 among all California water districts in charging a recurring fixed capital maintenance fee
21 based on meter size. Nonetheless the meter sizes prevalent among the existing residential
22 customer base of MMWD reflects the District’s 100+ year history with little or no financial
23 consequence from installing a larger large meter. Over this time MMWD has accumulated
24 over 15,000 residential large meter connections, equivalent to 20% of its residential
25 connections. While the change in how capital maintenance costs were financed meant that
26 properties with a 5/8” meter experienced a modest water bill increase commensurate with
27 the District’s increased need for capital maintenance revenue, homes with large meters had
28 a dramatic increase in their water bills.

20 MMWD’s residential capacity charges (the fee for initial “buy-in” for the property owner’s
proportional share of the water infrastructure) and MMWD’s bi-monthly recurring fixed

meter-size-based capital maintenance fee are very different from what one sees in the water districts and cities that MMWD uses as a basis for comparison to its own operations in justifying its approach. MMWD compares itself to (see Ex. 4, p.1, April 16, 2019 Board Meeting): Water Districts – Contra Costa Water, Dublin San Ramon, NMWD, EBMUD, Alameda County Water; and Cities – Palo Alto, Hayward, Mountain View, Los Altos, Livermore, Santa Clara, San Jose, SFPUC. None of the comparison water district or cities utilize MMWD’s methodology for capacity charges based on local service area average annual water usage; none of the comparison water district or cities charge a bi-monthly or monthly recurring fixed meter-size-based capital maintenance fee. The typical one-time residential capacity charge methodology used in the comparison water agencies is based on meter size, which has a profound economic impact on the initial choice of the size of the meter installation. For example, in EBMUD (East Bay Municipal Utility District) the capacity charge for a ¾” meter (in Region 1) is \$18,100 compared to the charge for a 1½” meter at \$60,460. And in Contra Costa Water the capacity charge for a 5/8” meter is \$20,978 compared to the charge for a 1½” meter at \$104,890. Whereas in MMWD there is no difference in the capacity charge for different meter sizes, because the MMWD methodology is tied to local service area average annual water usage. Petitioners allege that the substantial percentage –20%-- of residential water users in MMWD that have large meters is in part the consequence of MMWD’s usage of a completely different methodology for capacity charges than the method used by comparison water agencies in the region.

21 From February through July of 2019 (and continuing) MMWD has made repeated public communications to its customers such as that found in Ex. 4, p.2, comparing the Capital Maintenance Fee (CMF) to fees charged by other water agencies in California, while claiming that such meter-based fees are commonplace and the “industry standard.” In fact (to the knowledge and belief of Petitioners): no other water agency in the State of California charges a stand-alone recurring “Capital Maintenance Fee.” There is no “industry standard” among water agencies for charging a recurring “Capital Maintenance Fee”; to the contrary, if water industry “practice” is considered equivalent to “industry standard” (where 99.9% of all water agencies follow the same practice), then the standard

1 would be to charge customers for capital maintenance in the water rates based on the
2 amount of water usage. Though a “capacity charge” (see Gov. Code §66013) for the initial
3 buy-in of a parcel owner’s proportionate share of the capital infrastructure is similar to a
4 “Capital Maintenance Fee” in that both relate to capital infrastructure (the first is buy-in
5 and the latter is maintenance), a capacity charge **is not** subject to Prop 218 whereas the
6 recurring Capital Maintenance Fee levied against the identified property owner customers
7 of the District **is** subject to the stricter legal standards of Prop 218.

8 25. In MMWD any recurring charge for “maintenance” of capital infrastructure is legally
9 required by Prop 218 to be based on water usage on two overlapping grounds: (1) the
10 amount of capital infrastructure allocated to an individual parcel owner in the water-usage
11 based capacity charge calculation provides the proportional basis for allocation of
12 “maintenance” expense for that portion of the infrastructure, and (2) “water usage”
13 provides the most accurate proxy for determining the degree to which an individual water
14 user creates “wear and tear” on a water system, and thus is the accurate method of
15 measuring expense for maintenance—as is the practice in 99.9% of all water agencies. In its
16 public presentations MMWD ignored these facts and disregarded the law. Petitioners allege
17 that MMWD repeatedly and persistently lied to and deceived its customers in making false
18 representations that the proposed Capital Maintenance is in accordance with “industry
19 standards” and is comparable to fees charged by other water agencies either in the region
20 or anywhere in the State of California.

21 26. Though there is no hard age-distribution data on meter installations in MMWD, it is clear
22 that meter installations occurred gradually and concurrently with population growth in the
23 MMWD jurisdiction over the last 108 years as housing construction occurred; and it is to be
24 assumed that the meter installations were lawful and authorized at the time of installation
25 and connection to the MMWD distribution system, as MMWD was in control of the water
26 system connection process. The over 15,000 large diameter residential meters were installed
27 over a stretch of over 100 years largely because MMWD’s there was no significant financial
28 consequence to builders/property owners.

27 27. Then ten years ago a new factor emerged which has a dramatic impact on the capital
28 maintenance fee a property pays but had no impact on the capital maintenance burden a

property places on the MMWD. The CA Building and Fire Codes changed in 2010 to mandate fire sprinkler systems in all new residential home construction and significant remodels. The water “fire flow” requirements for residential sprinklers force the installation of meters that are at least 1” in size, and in some cases 1½”, to provide the instantaneous volumes of water residential sprinkler systems require. Of the more than 15,000 large diameter residential meters in MMWD, the District has identified 3,400 installed because of the y new code requirements. (See PowerPoint from the April 16, 2019 Board meeting, attached hereto as “Ex. 4” and incorporated by reference herein.) In addition, some large meters were installed due to low system water pressure (the District has not identified the number of those meters). After accounting for the 3,400 large residential meters tied to fire suppression sprinklers, and the unknown number installed due to low pressure, there are probably thousands of large meters which are “historical” meters, installed for reasons which may be unrelated to water use.

28. Both the raw numbers and the percentages of the residential connections with large meters will increase rapidly in the near future. In addition to the existing code requirement for residential fire suppression sprinklers in newly constructed houses, municipalities and counties are increasingly requiring sprinklers as a condition of any significant residential remodel permit, in addition to other incentives for sprinklers. Water consumption, not meter size, determines the impact of a property on the District’s capital maintenance requirements. As the Marin County Fire Chiefs Association pointed out to the MMWD, a sprinkler system does not increase water consumption but a fee that penalizes large meter size discourages installation of this important safety feature. Attached as “Ex. 5,” and incorporated by reference herein, is a true copy of the June 18, 2019 letter from the Marin County Fire Chiefs Association to MMWD objecting to adoption of new and increased fees that would make it more expensive for homeowners to upsize to sprinkler-accommodating larger meters and/or pay higher bimonthly fees MMWD charges for those larger meters. The Fire Chiefs also object to MMWD’s policy of encouraging meter downsizing to 5/8” in MMWD’s promotional literature.
29. MMWD has calculated the average annual water use for the 300 single family home service areas –**regardless of meter size** – to be 0.28 AFY (Acre Feet per Year), but half of the service

1 areas have annual water consumption of 0.21 AFY or less. [See “MMWD, Water Connection
2 Fee Study FINAL REPORT,” AUGUST 2, 2018, The Reed Group, Inc. with Raftellis
3 Financial Consultants, Inc., at p.12, fn.10.; hereafter this REPORT is referred to simply as the
4 “Reed Report.”] These quantities of water are easily served by a 5/8” meter, and in fact
5 68% of the District’s meters are 5/8” in size (see “Ex. 2”) which serve the average and
6 median water volumes to residential customers.

7 30. The relatively low water usage by MMWD residential water customers of all meter sizes is
8 the consequence of both (a) water conservation efforts of MMWD in the past 20 years and
9 continuing into the future, and (b) CA State laws implementing increasingly stringent
10 water conservation standards. These conservation measures are described in the MMWD
11 2015 Urban Water Management Plan Water Demand Analysis and Water Conservation
12 Measures Update – FINAL, July 1, 2015, MADDAUS WATER MANAGEMENT, INC.
13 (hereafter referred to simply as the MMWD “2015 Water Management Plan”). The District
14 on its own is committed to implementing even more aggressive conservation measures as it
15 goes forward (2015 Water Management Plan at p.38 et. seq.). California has enacted
16 multiple pieces of legislation ratcheting down the volumetric targets for water conservation
17 while demanding greater water efficiency / conservation in residential uses: (•) SB X7-7
18 “The Water Conservation Act of 2009” aka “20% by 2020” demands a 20% reduction of per
19 capita water use by the year 2020 (see 2015 Water Management Plan at p.23); (•) AB 715
20 amends the Plumbing Code and requires high efficiency toilets and urinals as of 2014 (see
21 2015 Water Management Plan at p.6); (•) SB 407 also amends the Plumbing Code and
22 applies high efficiency fixture standards by 2017 for single family residential to both
23 construction and replacements (see 2015 Water Management Plan at p.6); (•) the
24 “CALGreen Building Code” requirements effective 2011 for all new construction impose
25 mandatory requirements for 20% water savings below baseline on all indoor fixtures (see
26 2015 Water Management Plan at p.46); and (•) the most stringent and more recent (enacted
27 2018, to be implemented 2020 and beyond) conservation mandates are in AB 1668 and SB
28 606 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 Water Management Plan, 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 Water Management Plan, at p.43, figure 5-4. “Water Conservation Program Savings Projections – SB X7-7 Target, GPCD.”)

A.1. Overcharges to Residential Parcels Generally, and Especially Parcels with Large Meters

31. On May 28, 2019 MMWD approved a new “Capital Maintenance Fee” or “CMF” at graduated rates based on meter size. The MMWD Board issued its 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 table 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.

32 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, as it has a capacity 50% larger than 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.

33 The premise upon which the District relies for using meter size capacity to scale the CMF 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 15,000 plus 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, and thus does not reflect the burden the parcel places on the capital infrastructure. The average homeowner who purchases a house originally built 40 years ago with a large 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 unlawful result of the District's rate design and structure is that 15,000 plus parcel owner water users with large 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.**

1 34 If the meter numbers and annual water use by meter size for 2018 is applied to the year
2 starting in July of 2019, meters of 1 ½" or less used 81.3% of the the water but would be
3 charged 89.3% of the CMF, for any annual overcharge of \$1.3 million. Parcels with 1"
4 meters were overcharged more than \$100 per year each, on average, and contributed 32%
5 of the CMF revenues while only using 22% of the water. Conversely, meters over 1 ½"
6 used 18.7% of the water but only would only be charged 10.7% of the CMF. The 4", 6" and
7 8" meters parcels alone, as a group, were undercharged \$864,000.

8 35 As these numbers illustrate, the use of meter size to determine the capital maintenance
9 burden a parcel places on the District has had two unfair and illegal consequences. The
10 first is that many residential parcels are charged a disproportionate share of the CMF total
11 revenue, with large meters especially likely to have been charged a higher CMF than
12 would be appropriate if the true burden of the parcel, measured by average water
13 consumption, were used to determine the fee. The second consequence of the improper
14 use of meter size to determine the fee is that residential property owners as a group have
15 been disproportionately charged more than the burden they impose on the system as
16 compared to commercial parcels as a group with, as noted above, particularly large
17 undercharges for meters of 4" or larger. Both of these problems would be corrected by use
18 of average water use to calculate the CMF.

19 36 Many members of the public and representatives of Petitioners raised objections at public
20 meetings of MMWD that the use of "meter size" was an inaccurate, excessive and
21 disproportional method for charging a CMF. At various times in April and May of 2019
22 the District Board and General Manager acknowledged publicly that the use of "meter
23 size" could result in excessive charges, especially in instances where meters were sized to
24 allow for fire sprinklers or to compensate for low system water pressure. However,
25 MMWD's official April Prop 218 Notice (see "Ex. 6") sent to all the property owners and
26 setting a hearing for protests and consideration of adoption of fees for May 28, 2019 **makes**
27 **no mention of any adjustment in fees or any mechanism to change fees that are**
28 **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

1 under the new rates. In public meetings prior to the May 28 hearing the Board discussed
2 creating a “process” to reduce fees for those who are overcharged, but no decision was
3 made on a “process” and the Board members by consensus eschewed creating a rule using
4 objective criteria in favor of using *ad hoc* determinations on a case by case basis with no
5 definitive standards.

6 37 On May 28, 2019 the MMWD Board held a hearing to consider protests to the proposed
7 new and increased fees, and upon determining that insufficient protests had been
8 submitted to prevent them from proceeding the Board adopted the new and increased fees
9 in the form of MMWD Ordinance No. 442, a true copy of which is attached hereto as “Ex.
10 7” and incorporated by reference herein. Ordinance No. 442 adopts and imposes effective
11 July 1, 2019 the new CMF based upon meter size and at the rates indicated in the official
12 public Notice (Ex. 6). Available to the public only 3 business days before the day of
13 adoption of Ordinance No. 442 (when it was posted online) was the text included in
14 Ordinance No. 442 as the new §6.01.024 of the MMWD Code, approved May 28, 2019,
15 which reads as follows:

16 **6.01.23 Capital Maintenance Fee Adjustment for Upsized Residential Meters.**

17 The legal owner of a single-family residential property with a water meter that has
18 been upsized for non- consumption purposes (i.e., due to private fire suppression
19 system and/or due to low system pressure) may qualify for an adjustment to the
20 annual Capital Maintenance Fee.

- 21 (a) Upon written request of the legal owner of a single-family property,
22 through a District supplied completed application form that is supported
23 by documentation that verifies that a meter was upsized for non-
24 consumption purposes, the District will review the documentation
25 provided by the legal owner and determine whether the documentation
26 supports reducing the legal owner’s Capital Maintenance Fee by one meter
27 size.
- 28 (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 meter size, the Capital Maintenance Fee for the
property will be reduced downward by one meter size.

1 (c) A written determination of whether a reduction is granted or denied shall
2 be made at the sole discretion of the General Manager or his or her
3 designee and shall be final as to the District but subject to judicial review
4 under Code of Civil Procedure Section 1094.5. In making the
5 determination, the District will take into account the minimum meter size
6 required for the property without the fire suppression system or low
7 pressure demand.

8 (d) To ensure a consumer is in compliance with this section the District may
9 perform a water audit of any property receiving the Adjustment for
10 Upsized Residential Meters for non- consumption purposes.

38 As adopted §6.01.24: (•) Delegates to the General Manager (or his “designee”) complete
11 authority to determine whether the amount of an excessive CMF charge should be
12 reduced, without standards or any mechanism to objectively decide whether the fee
13 reduction should be granted. (•) Shifts the burden of proof to the property owner to prove
14 to the Manager through “documentation” that an excessive fee should be reduced, in
15 violation of Article 13D §6(b)(5) placing the burden on the agency to demonstrate
16 compliance with Prop 218. (•) Gives the General Manager (or his “designee”) “sole
17 discretion” to grant or deny a fee reduction, with no right of appeal to the Board, and
18 expressly relegates the fee payer to “judicial review under Code of Civil Procedure Section
19 1094.5” – i.e. administrative mandamus though there are no standards against which
20 judicial review could determine whether there had been an abuse of discretion or failure of
21 evidence. (•) Arbitrarily limits fee reductions to meters which have been “upsized” (for
22 “fire suppression” and “low pressure demand”) –effectively excluding over 90% of all
23 overcharged CMFs on large meters that exist merely by historical artifact. (•) Arbitrarily
24 limits a fee reduction of the CMF to “one meter size”; so in a typical example of a 1” meter
25 for fire sprinklers on a residential parcel that could receive adequate domestic supply
26 through a 5/8” meter, the District General Manager (at his sole discretion) could reduce
27 the fee, but is limited to that prescribed for a ¾” meter, a reduction from \$408.74 [1”] to
28 \$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

1 in Code §6.01.23(c) of Ordinance No. 442 that it would collect the CMF from standard
2 water bills (inclusive of tenants) for 2 years through June 30, 2021, and then later switch to
3 billing legal owners through the annual property tax statement (another decision revealed
4 only in the text of Ord. 442 revealed 3 business days before adoption); this effectively cuts
5 off any due process on rate reduction for tenant customers for 2 years. [•] The fee
6 reduction provision is not “self-executing,” which means that MMWD is deliberately
7 overcharging a large segment of its customers, and then requires the overcharged fee
8 payers to ask the District for reduction. [•]

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

40 Three months after the original Petition herein was filed, in apparent recognition that the

1 failure to base the CMF on water use rather than meter size, and other defects Petitioners
2 pointed out, the District made a slight modification to MMWD Code §6.01.24, adopted on
3 or about November 19, 2019 (Ordinance No. 444). The amendment does allow more than
4 one meter size reduction in the CMF removes the limitation for reductions to legal owners,
5 but retains the irrational limitation of requests to meters which have been “upsized,”
6 keeping the irrational distinction between large meters installed when the house was built
7 and those installed afterwards. However, the amendment did nothing to cure the legal
8 infirmities of the use of meter size to calibrate fees: The District still charges excessive fees
9 by force of law and forces the customer to make a burdensome reduction application.
10 While sticking to its irrational meter size charge basis, the District comes close to
11 conceding that water use is the true measure of the burden placed on the system by
12 including a provision that properties granted CMF fee reduction may be subject to a
13 “water audit” to carry out the “section’s purpose to equitably apportion the cost of water
14 service among District customers.” A “water audit” determines the amount of water
15 actually used, so the District concedes that water use is the basis for “equitably”
16 apportioning the CMF “among District customers.” Forcing its customers to make
17 application for a CMF adjustment puts an unfair impediment to correcting the
18 overcharges, as shown by the fact that by November of 2019 only 553 applications for a
19 rate adjustment had been received, a figure that is likely to be only 5% of those
20 overcharged.

21 **A.2. Overcharges Broadly to All Residential CMF Payers**

22 41 The CMF broadly overcharges the entire class of residential water users compared to
23 commercial rate payers. Residential usage for FY 2019 totals 7,209,302 (ccf) out of Total
24 Usage of 9,936,843(ccf), or 72.6% -- an accurate representation of the proportionate “cost of
25 service” for those parcels. However, annual CMF meter revenues for all residential meters,
26 which Petitioners estimate are 55,700 of the 61,900 meters the MMWD website indicates
27 are installed, is estimated to be 77.2% of all CFM revenues, so that residential meter parcels
28 pay 4.6% more than their fair share of the total CM revenues. (See chart of CMF impact in
Ex. ____.) As most residential customers have meters of 1 ½” or smaller, the fact that, as set
forth above, that meters in that category pay \$1.3 more per year than they would pay

1 based on their water use, shows that residential customers as a group are overcharged.

2 **A.3 The CMF Imposed on Residential Parcels Is Disproportionate to the Burden of those**
3 **Parcels, And Violates MMWD's Past and Present Standard for Allocating Capital Costs .**

4 42 The "Capital Maintenance Fee" is scaled upwards from the 5/8" meter size- \$163.50, to
5 3/4" - \$245.25, to 1" - \$408.74, to 1½" - \$817.47, and more as the diameter of the meter
6 increases. The CMF pays for maintenance, repairs, replacements for capital improvements
7 as well as other new capital improvements for the water system. The rationale given by
8 MMWD for using meter size as the metric for charging the CMF was that the maximum
9 hydraulic capacity of a meter to deliver water is a way to assess the potential for a service
10 connection to place demands on the entire system and the capital infrastructure that
11 supports it. The capacity of the 5/8" meter is used as the benchmark "Equivalent Meter
12 Unit" (EMU) with a value of 1 – increasing in steps of capacity with 3/4"=1.5 EMUs,
13 1"=2.5 EMUs and 1½ " = 5 EMUs. Petitioners estimate that about 72% of residential fee
14 payers have 5/8" meters, and so would pay the base 1 EMU rate of \$163.50. It is not
15 surprising that most residences would have a 5/8" meter, as that size is sufficient for the
16 domestic and irrigation needs of a five bedroom, four bath house on an acre of land.
17 While it is theoretically possible that houses with large meters would use between 50%
18 and 500% more water than houses with 5/8" meters, in fact parcels with large meters
19 generally use more water than those with smaller meters, the increase in use is much less
20 than the increase in the CMF they pay. For example, on average parcels with ¾" meters
21 use 38% more water than those with 5/8" meter, but pay a 50% higher CMF; for 1"
22 compared to ¾" meters, the consumption increase is 28% while the CMF increase is 67%.
23 The District's decision to use the theoretical maximum water use of a residence rather than
24 its actual water use is irrational and, in view of Proposition 218's mandate that charges be
25 proportional to the burden a parcel places on the District, illegal.

24 43 For many years the MMWD has used actual average water consumption to determine its
25 capacity charge, which allocates the value of the District's capital infrastructure to
26 individual property owners and charge them for their proportionate share of capacity in
27 the system at the time they connect to it. That *existing* methodology had been reviewed
28 and reaffirmed by the District as recently as August of 2018, as detailed in the "MMWD,

1 Water Connection Fee Study FINAL REPORT," AUGUST 2, 2018, The Reed Group, Inc.
2 with Raftellis Financial Consultants, Inc., followed almost immediately by an increase in
3 the "connection fee" in reliance on the Report. "Connection Fee" is just the terminology
4 used by the District for what is generally and legally known as a "capacity charge" (Gov.
5 Code §66013). (See Reed Report, p.1, fn.1)² A capacity charge and the CMF **are the same in**
6 **that both are charges intended to reflect the property owner's proportionate share of the**
7 **demand "capacity" of the water system capital infrastructure.** The District should have
8 used the same actual water consumption metric to determine the amount of the CMF and
9 it uses for the connection fee.

44 The "connection fee" or "capacity charge" is paid only once, when the property owner
10 connects to the MMWD system, as a "buy-in" of the capacity of the system capital
11 infrastructure based on the burden the parcel is expected to place on the system. While
12 many water system make a rough estimate of expected water use by basing the capacity
13 charge on the size of the meter the parcel owner wishes to install, the MMWD estimates
14 the demand the parcel will place on the capacity of the system *based on the average annual*
15 *water use in the localized service area where the property is located.* MMWD has a sprawling and
16 diverse jurisdiction that they have broken down into 300+ separately designated "service
17 areas," for each of which it calculates an Average Annual Water Usage, which range from
18 0.09 AF to 2.03 AF per year. An entire list of the 300+ service areas is attached as Exhibit C-
19 1 to the Reed Report, and also attached here as Exhibit 15.

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

27 ² The connection fee or capacity charge is distinct from the "service installation" charge MMWD has for
28 the physical connection of the parcel to the water system, including installation of the water meter. (See
Ex. 16.)

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.

46 To determine the capacity charge for a parcel, the Reed Report first 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 per acre foot of **\$34,180.** as of October of 2018 (see MMWD rate schedule attached hereto as Ex. 16.); effective July 1, 2019, increased to \$34,453 (Ex. 17.) Just as the S.G. Valley Drive parcels pare in the chart above use 50% more water and pay a 50% higher capacity charge than those in the Lagunitas Drive area, the S.G. Valley Drive parcels should pay a 50% higher CMF than the Lagunita Drive parcels.

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.

47 The capacity charge for a parcel is the charge per acre foot multiplied by the acre feet average for the service area where the parcel is located. 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 AF, multiplied by \$34,180 yields a capacity charge of \$6,836. The meter size is irrelevant to the demand the parcel is expected to place on the water system because the average actual water consumption in the service area is a much more accurate estimate of the likely future demand the parcel will place on the water system.

The capacity charge is the same whether a 5/8" or a 1½" meter is installed.

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

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. . . . There are about 300 separately designated “service areas” within the District’s water service boundaries.

49 The District’s long established methodology for allocating the cost of capital facilities in connection/capacity charges means that virtually every residential property owner/water customer has an existing interest in the capacity of the capital facilities of the District as measured by the annual water use standard. This existing interest extends to the property owner’s proportionate interest in the capacity of 100% of the capital infrastructure of the District. However, the CMF purports to charge for “capital maintenance,” repairs, replacements, etc. of **the same capital facilities** using the imprecise measure of water use, and thus burden on the system, provided by the meter size, despite the fact that the District has detailed information of average actual consumption for 300 service areas and bases its capacity charge on that data. Consequently the District uses one metric (localized avg. annual water use) for a property owner to *acquire* a certain amount of capital infrastructure capacity, and then a completely different metric (meter size) to charge the property owner, via the CMF, for the apportioning of *maintenance* of that same infrastructure. Petitioners allege that on its face it is arbitrary, capricious, and unreasonable to impose meter based fees for the “maintenance” of capital facilities that have been, and continue to be, bought by property owners via a completely different metric that’s much more accurately apportioned.

50 Petitioners allege that the District’s use of meter size for the CMF results in overcharges in every category of the residential meters, and is especially pronounced for: low water usage property owners with large meters, whose water needs could easily be delivered with a 5/8” meter. The amount of the CMF overcharge due to use of the defective meter based metric for capacity varies depending on the average annual water use of the localized service area where each individual parcel is located.

B.1. The Portion of the WMF Based on Meter Size Disproportionately Overcharges Large Meter Parcels

51 The 2019 \$10.29 WMF for a 5/8” meter consists of two parts: a “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 an additional \$4.00 based on the meter size, based on the claim that watershed management is related to “water quality,” so that the value to a parcel may be determined on an “Equivalent Meter Unit” (EMU) basis which escalates with meter size. (See “MMWD Final Cost of Service Study,” May 2017, Corollo Engineers, at p.37-41; hereafter referred to as the “Corollo Study.”) The 2019 WMF for 1” meters is \$16.30, a composite bi-monthly charge with the same \$6.29 base fee and approximately \$10.01 based on the meter size. However, while the meter based CMF differential between the 5/8” meter and the 1” meter is 250% (from \$4 to \$10), the average water consumption increase is only 77%.

52 The WMF hybrid approach, whereby it collects the same type of escalating meter size charge for part of the WMF, while the other component of the WMF is a flat per-water-meter charge means that the WMF does not increase quite as rapidly as the CMF, but it has the same infirmity from reliance meter size to tier the charge.

53 The District justifies the portion of the Watershed Management Fee (WMF base on meter size on the rationale that the service from the fee activity is proportionate to water consumption and that meter size is a good proxy for that consumption, and it is supposed to be directed to activities that support water quality. The District’s improper use of 1 meter size as the metric for capacity in the water system creates charges in excess of the cost of service, in a manner parallel to that for the CMF. Neither Ordinance 442 or 444 allows for any way to reduce the amount of the WMF to compensate for the disparity between actual water consumption and meter size.

B.2. The WMF Is Explicitly A Charge That Includes “General Governmental Services”

54 The WMF fixed portion of the WMF, \$6.29 in 2019, pays for general governmental services. For a 5/8 inch meter, the bi-monthly WMF charge (effective July 1, 2019) is \$10.29, which is the sum of a \$6.29 base charge plus a \$4.00 charge specific to 5/8” meters. The base watershed management 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,

1 and Fuels Integrated Plan (BFFIP; see 420). The District’s ecological stewardship of the Mt.
2 Tam preserve watershed benefits the entire public, and is open to everyone without regard
3 to whether you are a customer of MMWD or not. No matter how laudable or desirable
4 MMWD’s “stewardship” of the watershed may be, this substantial component of the WMF
5 is explicitly a “general governmental service” available to the public at large in the same
6 manner as the property owners in MMWD. This portion of the WMF cannot be charged as
7 a property related water service fee and is prohibited by Article 13D §6(b)(5).

8 **B.3. There Is No Statutory Authority for WMF Charges**

9 55 There is no statute authorizing MMWD to impose a fee for “watershed management.”
10 When this was brought to the attention of the District the response from an opinion of
11 outside counsel was that they have authority under Water Code §108.5. That particular
12 statute –which was adopted after MMWD approved and began imposing the WMF—is a
13 statement of general State policy for State financing of water projects, and references only
14 “source watersheds” that supply a majority of the water in the state. It does not expand the
15 authority of municipal water districts or other local agencies to impose and collect fees. In
the absence of statutory authority, the WMF is invalid.

16 **C. The CMF/WMF Are Excessive and Disproportionate to the Extent That They Incorporate** 17 **Unlawful “General Government Services” Charges for Fire Protection**

18 56 MMWD uses some of its Capital Maintenance Fees and Watershed Management Fee funds
19 for fire protection purposes. Attached hereto as “Ex.18,” and incorporated by reference
20 herein, is an informational report from MMWD (September 27, 2018) describing how
21 MMWD has: built and permanently maintains 1000 acres of fuel breaks, focusing on
22 neighborhoods on the perimeter of the watershed; implemented a Resilient Forests Project;
23 cleared away dense underbrush and accumulated fuel load; and in 2018 invested \$1
24 million in contract labor to manage fuel breaks, forests and invasive weeds, with the
25 expectation of tripling that investment going forward; purchased firefighting equipment;
26 developed training programs for their rangers; purchased a skip loader and a water
27 tanker; and coordinated with other agency fire departments. Attached hereto as “Ex.19”
28 are four PowerPoint slides presented to the MMWD Board on May 15, 2019, describing the
activities and investments MMWD intends to make in reducing wildfire risk and fighting

wildfires. The first slide in Ex. 19 refers to “Fire/Fuels Mgmt” as a “Capital Investment.” MMWD takes the position that activities such as brush clearing, removal of invasive weeds and maintenance of fuel breaks are “capital” expenditures that may be paid for from their capital improvement fund.

When the CMF was brought forward the Prop 218 notice announced that “A portion of the CMF will be dedicated to fund fire reduction efforts on our watershed.” (Ex. 6, p.3) The CMF revenues will go into the capital improvement fund, but from there it is not clear how much will come out for “fire protection.” There is no accounting from MMWD as to its actual or intended expenditures for “fire protection,” nor is there any specific allocation of funding between the WMF and the CMF, and both funds will be used for “fire protection.” Nonetheless it is clear that MMWD will not only continue its existing fire protection expenditures but will additionally increase those expenditures from CMF/WMF rate revenues to spend over \$15 million in the next five years on “fire protection” activities. This amount is part of what MMWD claims as its “cost of service” for the CMF and the WMF.

MMWD’s charges for “fire protection” service –whether they are conflated and disguised as “capital maintenance” or “watershed management”-- are blended into their WMF and CMF rates and paid by all of their water customers as an unlawful “general governmental service” prohibited by Prop 218 Article 13D §6(b)(5). Though MMWD takes the position that all of its “fire protection” efforts are necessary to protect its watershed and the water quality in its reservoirs, the 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 in question 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.

Additionally, 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.

1 The "2016 Municipal Service Review" by the Marin County Local Agency Formation
2 Commission" [hereafter "2016 LAFCO MSR"] at p.4-113, found that there are 76,410
3 residential units (combined single family residential units and multi-family residential
4 units) in the MMWD jurisdiction. If you add together the total number of residential size
5 meters in MMWD at slightly less than 60,000, and estimate the number of multi-family
6 residential units by their water usage at about 15,000 units, there is a gap of over 5,000
7 residential units that use well water. Any "wildfire protection" service provided by the
8 District is a service provided to these well-water parcels as a "general governmental
9 service" available to them as members of the public in the same fashion and on the same
10 basis as this "general service" provides general benefits to MMWD customers without
11 discrimination. "Watershed management" has the same "general governmental service"
12 attributes, and may supply an extra benefit to well-water users insofar as it aids in
13 protecting the underground aquifer; regardless no effort is made by MMWD to distinguish
14 between members of the public who may benefit from "watershed management" as a
"general governmental service."

15 60 MMWD is further barred by the Local Agency Formation Commission from incorporating
16 Fire Protection as a general governmental service in its services provided as "capital
17 maintenance" or "watershed maintenance." Attached hereto as "Ex. 24," and incorporated
18 by reference herein, is the cover page and page 4-118 of the LAFCO "Municipal Services
19 Review" (MSR) for MMWD. The MSR states:

20 MMWD—which is currently one of 37 municipal water districts currently operating in
21 California—is presently authorized to provide three specific services within its
22 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.

23 The MSR then lists the "Active Service Powers" as: (•) potable / non-potable water, and (•)
24 public recreation. The "Latent Service Powers" are listed as: (•) hydroelectric power, (•) **fire**
25 **protection**, (•) solid waste/garbage, (•) storm drainage, and (•) wind/solar power. There
26 have been no proceedings at LAFCO to change this status. Thus, before any contention by
27 MMWD that it may add the charges for this general governmental service into the rates for
28

property related fee, it cannot satisfy the predicate of legal authority to provide “fire protection” as a municipal service.

61 Another impediment to MMWD’s legal authority to incorporate general “fire protection” service into the CMF and WMF is the consent requirement of Water Code 71680, which provides:

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

The “fire protection” services which MMWD claims to extend across the reach of the District would include the 10 municipalities and the County which have their own fire departments and fire protection services that also serve the public. MMWD, which is merely a service district operating within the legal jurisdictions of cities and the County that serve the public under Cal. Const. Article XI §7 “police powers,” has not obtained the consent of any of those 11 local agencies to provide fire protection service.

D.1 Overcharges to CMF And WMF Payers for New Capacity for Future Users

62 The 2015 Water Management Plan shows that the expected water service population in MMWD will expand from about 191,800 people

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

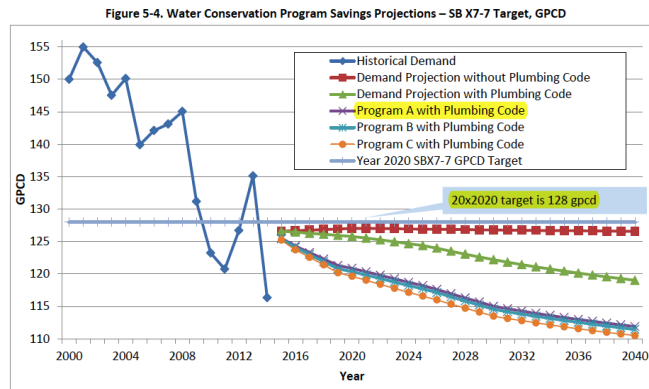
Table 3-4. (DWR Table 2-2) Population – Current and Projected

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

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:

63 At the same time the 2015 Water Management Plan 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 Water Management Plan, 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 Water Management Plan 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.

1 These findings from the 2015 Water Management Plan (not even accounting for the
2 subsequent 50%+ more drastic conservation reductions in per capita water usage dictated by
3 AB 1668 and SB 606) indicate that the District would not need to invest in additional water
4 capacity enhancing improvements and infrastructure to meet customer needs through the year
5 2040.

6 64 The next step in the District's planning process, however, was the March 2017 MMWD
7 "Water Resources Plan 2040," RMC & Woodward & Curren Consultants, referred to
8 herein as the "Water Resource Plan 2040." That consultant study provided the basis for
9 MMWD to pursue a highly expensive goal of "resiliency" that would generate
10 new /increased future water service capacity of about 2,000 AFY **made necessary only by**
11 **future residential growth in the District** and not by the **existing** water users who will pay
12 for it via new /increased fees.

13 65 The term "**resiliency**" is used by the District and its consultants in a technical sense as a
14 term of art that ties back to the definitions and findings in the Water Resource Plan 2040.
15 "Resiliency" means: the ability of the District to withstand "potential threats to reliability"
16 of the water system from a variety of at least seven different hazards/emergencies (severe
17 drought, climate change, wildfire, earthquake, interruption of imported supply or
18 individual reservoir interruption, landslide, power failure) and still maintain the "baseline
19 operational yield" of the system. The District and its consultant calculated the "baseline
20 operational yield" as being "a 25% storage reserve in MMWD's reservoir system," with the
21 result that "MMWD's operational yield is 29,020 AFY" retained in its reservoirs. (Water
22 Resource Plan 2040, at Appendix D "Marin WaterSim Model Operational Yield Analysis
23 Technical Memorandum," p.2.)

24 66 The question addressed in the Water Resource Plan 2040 is whether the District is
25 positioned –going out to the year 2040—to survive the various water "reliability threats"
26 and still maintain its "operational yield"; and if there is a probability that any of those
27 seven hazards/emergencies might cause the District to fall below its standard of
28 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).

67 The cost of "resiliency" going out to 2040 is revealed in the details of the Water Resource Plan 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 Water Resource Plan 2040, p.4-1,8-1). In order to assess the "resiliency" impact of the various aforementioned threats, the Water Resource Plan starts by projecting the base water demand (status quo ante) through 2040. The Water Resource Plan projected base water demand of about 25,000 AF demand in 2020, and declining slightly to 24,200 AF in 2040. (See Water Resource Plan 2040 at p.4.2. Here again it should be noted that the Water Resource Plan 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.

68 Then, for the next step in the Water Resource Plan 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." (Water Resource Plan 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 Water Resource Plan 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]**

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

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

1 expected until the fifth year of the drought, which provides time to re-assess and move
2 forward implementation of resiliency options after the drought starts.” (Water Resource
3 Plan 2040, p.8-1)

4 70 The Water Resource Plan 2040 then developed and examined 40 “resiliency options” that
5 individually or collectively could be applied by the District to achieve the desired
6 resiliency. (See Water Resource Plan 2040 Appendix F, Resiliency Options Technical
7 Memorandum.) MMWD settled on a package of 3 resiliency options titled in the Plan as
8 “Expand Existing Programs.” (See Water Resource Plan 2040, Appendix I, p.3 & Table 3-1,
9 a copy of which is attached hereto as “Ex.8” and incorporated by reference herein,
10 highlighting added to original to direct attention.) The 3 component parts of “Expand
11 Existing Programs” are “WE01 Enhanced Conservation,” “ES07 Santa Rosa Plain
12 Conjunctive Use,” and “EO03 Watershed Management.” The composite water yield from
13 this package at **2,000 AFY** Dry Year Yield and 1,200 AFY Average Year Yield is
14 appropriately scaled to the roughly 1,701 AFY initial deficit benchmark examined for the 6
15 year severe drought “resiliency threat.” However, the capital costs for this package and the
16 \$/AFY cost of water are beyond all reason. Table 3-1 from the Water Resource Plan 2014
17 (Ex. 10 herein) shows that this package has a lump sum capital cost of \$133.8M and an
18 annual cost of \$10.4M, owing to the exceptionally high cost “watershed management” a
19 key component of the “Expand Existing Programs” option for producing additional water.
20 The outsized cost of this strategy is apparent in the comparison table detailing all 40
21 “resiliency options” and their cost of water per AFY (Water Resource Plan 2040, Appendix
22 H, Attachment A, p.A-1, attached hereto as “Ex. 11” and incorporated by reference herein).
23 “Watershed management” water at \$24,200/AFY is the third most expensive of all 40
24 options, dwarfing the cost of water production technologies like desalination (see Ex. 11
25 rows labeled DS01—DS05) and recycling (see RU01 DPR SASM – RU04 DPR Through
26 Lakes CMSA) all under \$5,000/AFY, and rivaled in cost only by marginal technology like
27 E001 “fog capture” at \$25,000/AFY and transfer of water from distant Humboldt County
28 at \$28,600/AFY.

71 The Water Resource Plan 2040 has a detail page for each of the 3 components of the
“Expand Existing Programs” package. “Watershed Management [EO03]” in Appendix I at

p.82-83 of the Plan (attached hereto as “Ex. 12” and incorporated by reference herein) shows a “probable capital cost” of \$132,840,000, together with a water yield estimate of 210 AFY and an average cost of \$24,200 AFY. “Enhanced Water Conservation [WE01] in Appendix I at p.1-2, of the Plan (attached hereto as Ex. 13 and incorporated by reference herein) shows zero capital investment costs, a water yield of about 1,000 AFY, and an average cost of \$990 AFY. “Santa Rosa Plain Conjunctive Use [ES07]” in Appendix I at p.52-53 of the Plan (attached hereto as Ex. 14 and incorporated by reference herein) shows probable capital cost of \$1,000,000, a water yield of about 900 AFY, and an average cost of \$1,400 AFY. The “Watershed Management” component comprises over 99% of the monetary cost of the option designated in the Water Resource Plan 2040 as “Expand Existing Programs.”

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

73 Petitioners are informed and believe, and thereon allege, that \$10.4M in new CMF and WMF revenues collected annually by MMWD is devoted to the creation of no more than 2,000 AFY of **new capacity “resiliency”** in the District water system. For all of the existing water user fee payers in MMWD that have already paid for their capacity in the water system, and who will continue to reduce their total water usage over the next 20 years through ongoing water conservation efforts, the new capacity created by these fee revenues will provide no service to them whatsoever. New capacity will only be needed in the next 20 years, if at all, to provide capacity and water service to the roughly 20,000

new residents expected to come to the MMWD jurisdiction from now till 2040. MMWD cannot lawfully compel Petitioners and all other existing water customers to pay at least \$10.4M annually in CMF and WMF fees for which they receive no service.

E. Failure to Conduct Elections – Art.13D §6(c)

74 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.” Gov. Code §53750(n) [Prop 218 Omnibus Implementation Act] defines “Water” as follows:

(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.

75 “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.

76 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.

77 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

78 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.

79 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.

80 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 1½" meters. These new fees were never described in the Prop 218 Notice for public consumption and the required notice to individual property owners-- especially the thousands of residential property owners using fire suppression sprinklers. In essence, the District invented on the fly a new ¾" fee and a new 1" fee for residences with fire suppression sprinklers, imposing excessive fee amounts that have nothing to do with actual water usage or the District's cost of service, and that were only unveiled to the public upon the online posting of Ord. 442 three business days before the May 28, 2019 approval.

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

1 valid assumptions and how do we the public assess whether the needs and priorities are
2 justified? The answer from the President of the Board was: **“I think you need to have the**
3 **money before you decide on your list of projects.”** The fees were approved on May 28,
4 2019. The District subsequently approved the budget and the 10 year CIP on June 18, 2019;
5 in the meantime, the 10 year CIP had increased in total amount by about \$9M to
6 \$241,379,000. MMWD never gave fee payers Notice of its real legally required “reason”
7 before adopting the CMF fees. It went for the money first.

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

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

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

23 mandatory requirements for water agencies collecting such fees (Section 66013(c)(d)):

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

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

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

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

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

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

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

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

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

17 (5) A description of each interfund transfer or loan made from the capital facilities
18 fund. The information provided, in the case of an interfund transfer, shall identify
19 the public improvements on which the transferred moneys are, or will be,
20 expended. The information, in the case of an interfund loan, shall include the date
21 on which the loan will be repaid, and the rate of interest that the fund will receive
22 on the loan.

23 83 On a persistent and ongoing basis MMWD ignores and violates its statutory duties under
24 Gov. Code §66013 to account for its capacity charges, how they have been expended, and
25 how they are allocated to public improvements in combination with other funding
26 sources. This statutory violation deprives the public of essential information to ensure the
27 accountability of MMWD in its management of capacity charges and its expenditures on
28 capital improvements generally. This violation is independently actionable from claims
related to the CMF and WMF.

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

**I. PETITIONERS THEREFORE SEEK ALTERNATIVE AND
PEREMPTORY WRITS OF MANDATE AS FOLLOWS:**

**A. WRIT OF MANDATE (CCP §1085) TO ENFORCE CALIFORNIA CONSTITUTION
ART. 13D §6(b)(1), TO PROHIBIT RESPONDENTS FROM IMPOSITION AND
COLLECTION OF THE CAPITAL MAINTENANCE FEE ON THE GROUNDS THAT IT
GENERALLY OVERCHARGES LARGE METER PARCELS AND IS NOT IMPOSED IN
PROPORTION TO THE BURDEN PARCELS PLACE ON CAPITAL MAINTENANCE.**

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

86 As hereinbefore alleged (A.1), there is a large class of over 15,000 residential water customers in MMWD with large meters as a result of fire sprinkler requirements, low water pressure in the system, or merely by historical happenstance. The imposition of the fixed meter-size rates of the CMF collects revenues far in excess of the District's costs of providing service.

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

88 As hereinbefore alleged (A.2), the CMF imposed upon the broad class of residential customers collects excess revenues more than the cost of services as measured by annual water usage. As hereinbefore alleged, 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 large and meters.

89 As hereinbefore alleged (Claim A.3) 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 CMF revenues from the individual property owners violate of Art. 13D §6(b)(3) of the California Constitution.

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

91 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).

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

93 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 WATERSHED MANAGEMENT FEE, ON THE GROUNDS THAT IT DISPROPORTIONATELY IMPOSES PART OF THE FEE BASED ON METER SIZE, OVERCHARGES LARGE METERS, INCLUDES GENERAL GOVERNMENTAL SERVICES AND LACKS STATUTORY AUTHORITY.

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

95 As hereinbefore alleged (B.1), the WMF uses the same meter-based improper metric for capacity to allocate infrastructure costs, which overcharges large meters, and , there is no partial reduction option for large meters for the WMF.

96 MMWD's use of an improper incongruent metric for allocating infrastructure costs to the WMF is arbitrary, capricious, and irrational. The overcharges of WMF revenues from the individual property owners violate of Art. 13D §6(b)(3) of the California Constitution.

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

98 As hereinbefore alleged (B), there is no statutory authorization for MMWD as a municipal water district to impose a fee for "watershed management." Therefore, the WMF is *ultra vires* and void.

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

100 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)(3), and to prohibit collection of the fees that violate Art. 13D §6(b)(3).

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

102 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.

**C. WRIT OF MANDATE (CCP §1085) TO ENFORCE CALIFORNIA CONSTITUTION
ART. 13D §6(b)(5), TO PROHIBIT RESPONDENTS FROM IMPOSITION AND
COLLECTION OF THE CAPITAL MAINTENANCE FEE AND WATERSHED
MANAGEMENT FEE, ON THE GROUNDS THAT FIRE PROTECTION IS A GENERAL
GOVERNMENTAL SERVICE AND HAS NO LEGAL BASIS**

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

104 As hereinbefore alleged (C.1), MMWD uses the CMF and the WMF to pay for "fire protection services" which the District claims is for the benefit of everyone. That is, regardless of the nature or geographic reach of the District's fire protection services, the service is available to the public at large in substantially the same manner as it is to property owners and payors of the property related fees. Thus, this component charge in the CMF and WMF violates the prohibition of Art. 13D §6(b)(5) of the California Constitution against imposition of charges for "general governmental services."

105 As also hereinbefore alleged (C), the CMF and the WMF have "fire protection" expenses embedded in their "cost of service" -- which then is allocated to individual property owners paying these fees. The fire protection expense unlawfully increases and falsely inflates the CMF and WMF to levels greater than the funds required to provide the actual or ostensible CMF / WMF service for which the fees were collected, and are out of proportion to the cost of service for the true purposes of the CMF and WMF, in violation of Art. 13D §6(b)(1)(3) of the California Constitution.

1 106 Petitioners hereby petition the Court for an alternative writ and a peremptory writ of
2 mandate to compel performance by Respondents of their mandatory duties under Art. 13D
3 §6(b)(5), and to prohibit collection of the fees that violate Art. 13D §6(b)(1)(3)(5).

4 107 Petitioners have no plain, speedy and adequate remedy in the ordinary course of law,
5 other than the relief sought by this petition.

6 108 Respondents' failure and refusal to perform their legal duties as hereinbefore described
7 causes continuing injury to Petitioners and the Public. The continuing injury caused by
8 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 **D. WRIT OF MANDATE (CCP §1085) TO ENFORCE CALIFORNIA CONSTITUTION**
11 **ART. 13D §6, TO PROHIBIT RESPONDENTS FROM IMPOSITION AND COLLECTION**
12 **OF THE CAPITAL MAINTENANCE FEE AND WATERSHED MANAGEMENT FEE, ON**
13 **THE GROUNDS THAT THEY OVERCHARGE FOR FUTURE CAPACITY .**

14 109 Petitioners refer to and incorporate by reference paragraphs 1 through 112 as though set
15 forth at length herein.

16 110 As hereinbefore alleged (D.1), MMWD's expansive/expensive 10 year CIP embraces the
17 goal of water system "resiliency" to reliably serve the District's needs by the year 2040 (see
18 MMWD "Water Resources Plan 2040," RMC & Woodward & Currant Consultants ["Water
19 Resource Plan 2040"]. Driving the need for increased "resiliency" is the projected addition
20 of about 20,000 new people to the District's jurisdiction by 2040, which the District plans to
21 address by adding another 2,000 AFY of new capacity to the system. None of the new
22 capacity is attributable to existing customers because their demand will continue declining
23 due to additional conservation measures combined with State law legal constraints on
24 water use and requirements for water efficiency. The new improvements to enhance
25 capacity by 2,000 AFY have a capital cost of about \$133.8M and annual costs of \$10.4M.
26 Those improvements provide no "service" to Petitioners and cannot be part of the "cost of
27 service" for their rates on the CMF—resulting in collection of revenues greater than the
28 cost of service by \$10.4M annually and eventually \$133.8M in the aggregate.

112 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.

113 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.

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

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

116 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, and to prohibit collection of these fees that violate Art. 13D §6.

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

118 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.

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

1 119 Petitioners refer to and incorporate by reference paragraphs 1 through 120 as though set
2 forth at length herein.

3 120 As hereinbefore alleged (E), Art. 13D §6(c) requires an election and approval by a majority
4 vote for property related fees, except for fees for sewer, **water** and refuse collection
5 services. Petitioners allege that both “watershed management” and “fire protection”
6 services are distinct and separate from the activity of “water service” excluded from the
7 election requirement for new/increased property related fees. The District’s failure and
8 refusal to conduct elections for fees for fire protection services and watershed management
was in violation of Art. 13D §6(c).

9 121 Petitioners hereby petition the Court for an alternative writ and a peremptory writ of
10 mandate to compel performance by Respondents of their mandatory duties under Art. 13D
11 §6(c), and to prohibit collection of these fees that violate Art. 13D §6(c).

12 122 Petitioners have no plain, speedy and adequate remedy in the ordinary course of law,
13 other than the relief sought by this petition.

14 123 Respondents’ failure and refusal to perform their legal duties as hereinbefore described
15 causes continuing injury to Petitioners and the Public. The continuing injury caused by
16 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 **F. WRIT OF MANDATE (CCP §1085) TO ENFORCE CALIFORNIA CONSTITUTION ART.**
19 **13D §6(a), TO PROHIBIT RESPONDENTS FROM IMPOSITION AND COLLECTION OF**
20 **THE CAPITAL MAINTENANCE FEE AND WATERSHED MANAGEMENT FEE, ON THE**
21 **GROUND THAT MMWD DID NOT FOLLOW THE MANDATED PROCEDURES FOR**
22 **FEE ADOPTION.**

23 124 Petitioners refer to and incorporate by reference paragraphs 1 through 125 as though set
24 forth at length herein.

25 125 As hereinbefore alleged (F), the Art. 13D, §6(a) procedures for adoption of a property
26 related fee require 45 days advance Notice to each parcel owner and tenant of the
27 calculated **amount** of the fee applicable to the parcel, the **basis** upon which the amount of
28 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
2 CIP, because: that CIP was not used in the District’s fee studies; the 10 year CIP was only
3 an informal draft by staff that had no official approval or legal existence as a plan or
4 otherwise; the District made clear its approach to first approve the CMF fee to create a
5 known quantity of revenues and then subsequently determine the projects and costs of the
6 CIP to back into the revenues; the CIP claimed to be the “reason” for the CMF was
7 approved 3 weeks after the CMF was adopted, and in the meantime the CIP had gained
8 \$9M in project costs between its draft status before adoption of the CMF and its final
9 approved form after adoption of the CMF.

10 126 MMWD breached its duties as to disclosing the “amount” of the fees, in particular as to
11 residential meters of large size, when it waited until after mailing the Prop 218 Notice to
12 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
14 of the General Manager -- MMWD Code §6.01.23. Knowing that it was initiating charges of
15 an incorrect and excessive amount, the District has attempted to shift the duty of
16 determining the correct amount to the fee payer after adoption of the new fees, by
17 requiring an application for reduced fees with no certain outcome.

18 127 Then MMWD changed the “basis” for the fee structure by approving Policy No. 52 on June
19 27 after the May 28 approval of the fees, to give special breaks, fee deferrals and payback
20 plans to local agencies on an unequal and discriminatory basis vis-a-vis private property
21 owners.

22 128 The procedures and 45 day Notice for the fees should have included and disclosed: an
23 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
25 basis of the fees including which fee payers would get special privileges and which would
26 not. MMWD’s egregious failure to follow the required procedures was a violation of Art.
27 13D, §6(a).

28 129 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(a), and to prohibit collection of these fees that violate Art. 13D §6(a).

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

131 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.

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

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

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

134 Petitioners are informed and believe, and thereon allege, that the annual stream of roughly
\$1M of capacity charges taken in by MMWD is not applied as a credit or contribution to
the cost of public improvements as required by law. If the approximately \$1M of capacity
charge revenues were lawfully credited the "cost of service" for the CMF would be \$1M
less, and therefore the current CMF annually collects revenues in excess of the funds
required to provide the property related service by this amount of approximately \$1M, in

violation of Art. 13D §6(b)(1).

135 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
Government Code §66013 and Art. 13D §6(b)(1), and to prohibit collection of these fees
that violate Art. 13D §6(b)(1).

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

137 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.

II. COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

138 Plaintiffs refer to and incorporate by reference paragraphs 1 through ____ as though set
forth at length herein.

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

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

141 Plaintiffs contend that:

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

B. The charges for the CMF and the WMF are greater than the proportionate cost of service
to individual parcels in violation of Art. 13D §6(b)(3): (1) Though the District has for many

1 years used a refined metric for capacity based on annual water use in localized service areas,
2 the CMF uses an inaccurate improper meter-size metric for capacity that is incongruent and
3 overcharges; and (2) the WMF, though a composite fee, has the same deficiency that makes it
4 disproportionate to cost of service..

5 C. Plaintiffs allege that “fire protection services” and “watershed management” paid for
6 from the CMF and WMF are “general governmental services” prohibited by Art. 13D §(b)(5).

7 D. Plaintiffs allege that there is no legal authorization for “fire protection services” or
8 charges for such services in the CMF and WMF. Further, there is no statutory authorization for
9 a municipal water district to charge fees for “watershed management.”

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

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

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

18 142 Whereas, Defendants dispute each and all of Plaintiffs’ contentions, and Defendants assert
19 that they have fully complied and continue to comply with all of their legal duties.

20 143 Plaintiffs desire a judicial determination of their rights and duties, and a declaration as to
21 whether Defendants have breached their legal duties as alleged herein, and whether the
22 CMF and WMF are legally void and invalid. A judicial declaration is necessary and
23 appropriate at this time, under the facts and circumstances hereinbefore alleged, in order
24 that the rights and duties of Plaintiffs and Defendants may be ascertained and finally
25 determined by the Court.

26 144 Plaintiffs and other ratepayers will presently and continuing into the future suffer
27 irreparable harm from MMWD’s ongoing imposition and collection of legally invalid fees
28 for the CMF and WMF. Plaintiffs therefore seek preliminary and permanent injunctive

1 relief from the Court, in such form as the Court may allow, to preserve the proceeds and
2 revenues of disputed unlawfully collected fees, to enjoin imposition and collection of
3 unlawful fees, and to compel credits or returns of unlawfully collected fee revenues.

4 **III. REFUND CLAIMS**

5 145 Depending on which of the claims set forth above are sustained by the Court, certain
6 classes of MMWD customers who paid the CMF and WMF fees are entitled to refunds.
7 The classes entitled to refunds are defined, and the basis for their refund claims are set
8 forth, below.

9 **CLASS DEFINITIONS**

10 **RESIDENTIAL CUSTOMER CLASS**

11 152 Plaintiffs Gloria Rashti, Doug Kelly, Mari Robinson, and Robert Rosenbluth are members
12 of and class representatives of a Residential Customer Class, defined as: (1) residential
13 customers of the MMWD; (2) who paid some or all of the Capital Maintenance Fee or
14 Watershed Management Fee they were billed since July of 2019. A “customer” as used
15 herein is the person to whom the MMWD water bill was addressed.

16 **PROPORTIONATE SHARE SUBCLASS**

17 153 Plaintiffs Gloria Rashti, Mari Robinson, and Robert Rosenbluth are members of and class
18 representatives of a Proportionate Share Subclass defined as: Members of the Residential
19 Customer Class who paid a disproportionately large share of the total permissible Capital
20 Maintenance Fee or Watershed Management Fee collections. The entire amount of the
21 CMF, and part of the WMF, billed to each residential customer were determined based on
22 the size of the water meter on the property. If, instead of using water meter size, the
23 MMWD had determined the WMF and CMF based on the two year average water
24 consumption on the property shown by its records, the bills would have been
25 proportionate to the burden the property placed on the MMWD. The amount by which a
26 properly apportioned bill would have been less than the actual bill is the basis for refunds
27 due the Proportionate Share Subclass.

28 **CLASS ALLEGATIONS**

154 There is a well-defined community of interest in the questions of law and fact involved

1 affecting the members within the Class and Subclass in that the questions of fact and of
2 law, and what remedy is necessary to compensate and protect each, are common to each
3 member of the Class. Within the Class and Subclass, these questions of law and fact
4 predominate over questions that affect only individual members.

5 155 The claims of the representative plaintiffs in each class are typical of those of the Class they
6 represent.

7 156 Representative Plaintiffs will fairly and adequately protect the interests of the Classes they
8 represent.

9 157 There is no plain, speedy, or adequate remedy other than by maintenance of this class
10 action since the damage or restitution to each member of the Classes may be relatively
11 small, making it economically unfeasible to pursue remedies other than a class action.
12 Consequently, there would be a failure of justice but for the maintenance of the present
13 class action.

14 158 The prosecution of individual actions by members of the Classes would tend to establish
15 inconsistent standards of conduct for MMWD and to result in the impairment of members'
16 rights and the disposition of their interests through actions to which they were not parties;
17 it would also result in the unnecessary duplication of effort and expense.

18 159 The Class may, through common proof, show that it is entitled to a mandate that the
19 excessive fees collected are not owed by its members, that the excessive amounts paid
20 must be refunded, and that an injunction preventing MMWD from attempting to collect
21 the excessive fees should be issued.

22 160 On information and belief, Plaintiffs allege that the Class and Subclass consist of more than
23 1,000 persons.

24 161 Plaintiffs allege *substantial benefits* from certification that render proceeding as a
25 class superior to the alternatives as the size and number of individuals claims
26 makes their individual adjudication impractical and grossly inefficient.

27 162 The District had a mandatory duty to impose the CMF and WMF in accord with the
28 dictates of Proposition 218.

163 Plaintiff class representatives will fairly and adequately protect the interests of the

1 members of the Classes, since representative Plaintiffs possess no interest which is adverse
2 to the interests of absent members of the Class they represent, and since Plaintiffs have
3 retained counsel experienced in the prosecution of class actions.

4 164 Plaintiffs have submitted to respondent WWMD, pursuant to Government Code section
5 900 et seq., a government claim for refund of all or portions of the CMF and WMF fees and
6 protests of payment of behalf of the Class. That claim has been denied explicitly or by
7 operation of law.

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12 **FIRST REFUND CLAIM: PARTIAL REFUND OF CMF**
13 **FAILURE TO PROPERLY APPORTION CAPITAL COSTS**
14 **UNJUST ENRICHMENT**
15 **(ON BEHALF OF PROPORTIONATE SHARE SUBCLASS)**

16 165 Plaintiffs incorporate herein by this reference the preceding allegations, and particularly
17 reference Claim A.3.

18 166 Respondent MMWD has imposed and collected a CMF on numerous parcels in the District
19 in amounts in excess of that parcel's proportionate share of the approximately \$16.5
20 million in capital costs for which that fee is assessed. This improper apportionment of the
21 capital costs among the parcels violates California law, including section 6(b)(3) of Article
22 XIII(D) of the California Constitution.

23 167 The members of the Proportionate Share Subclass have paid and will pay an excessive
24 CMF from July 2019 forward, and Marin Municipal Water District's improper levying of
25 these charges represents a continuing violation.

26 168 The capital cost burden imposed by a particular parcel is proportional to the average water
27 use of that parcel. The MMWD has calculated the average water consumption of single
28 family residences located in each of 300 areas of the District, as shown in Exhibit 15 hereto.
For single family residences, the average water use, as shown in Exhibit 15, should have
been used to determine that portion of the \$16.5 million capital cost attributable to that

1 residence. If the Court determines that basing the allocation on the 300 service area
2 average water consumption figures is not sufficiently precise to comply with Proposition
3 218, the actual average water consumption of each parcel should be used to determine its
4 proportionate share of the CMF.

5 169 When a new house is built on single family parcel in the MMWD service area and seeks to
6 establish a new water connection, the MMWD calculates the payment the parcel must
7 make for the connection, known as the "capacity charge." MMWD calculates the capacity
8 charge based on the average water use for the area in which the parcel is located, as shown
9 in Exhibit 15; the charge is the same regardless of the size of the meter the homeowner
10 chooses to install. The same average water use methodology should have been used to
11 determine each parcel's share of capital maintenance cost sought to be recovered by the
12 CMF.

13 170 A water meter is merely a piece of equipment capable of measuring the amount of water
14 which goes through it; the meter size places an upper limit on the amount of water the
15 parcel it services may use, but may have no relation to the actual water consumption of the
16 parcel. It is in recognition of this fact that the MMWD imposes capacity charges based
17 expected actual water use, not meter size. The MMWD has never been based the capacity
18 charge on meter size, resulting in the installation of a large number of meters that have a
19 larger capacity than needed for the actual amount of water used by the parcel.

20 171 The CMF is intended to pay for the District's ongoing cost of maintenance, replacement,
21 and repairs to the same infrastructure into which a parcel buys through the capacity
22 charge. To be legal, the CMF must be proportional to the burden each parcel imposes on
23 the District for capital maintenance. The burden is imposed is proportional water used. .
24 Rather than average water use, however, the District bases the CMF on the size of the
25 water meter located on the parcel, which does not correlate to the burden the parcel places
26 on the District. Thus, while a 5/8" meter has a capacity to delivery only 20 gallons per
27 minute (gpm) and a 1½" meter has the capacity to deliver 100 gpm, if two parcels, one
28 with the smaller and one with the larger size of meter, each use .3 acre feet of water per
year, each imposes the same burden on the capital infrastructure and should pay the same
CMF; it is illegal and irrational to charge the parcel with the 1 ½" meter \$817.47, five times

as much as the \$163.50 charged the one with the 5/8" meter, unless the actual water use is five times as high.

Reallocation of the CMF revenues based on actual burden on the district, as determined by water use, will, Plaintiffs believe, result in a showing that almost all members of the Residential Customer Class with meters over 5/8" were overcharged.

MMWD's use of meter size to apportion infrastructure costs is arbitrary, capricious, and irrational. The use of meter size to determine the CMF, rather than water use, violate of Art. 13D §6(b)(3) of the California Constitution.

Respondent MMWD has breached its plain, ministerial, nondiscretionary, mandatory duty to comply with California Constitution Art. 13D §6(b)(3) by approving and imposing a CMF on many parcels which exceeds the proportionate cost required to provide the property related to that parcel.

Respondent has been unjustly enriched by excess payments made by members of the Proportionate Subclass, which excess payments should be refunded. The amount of refund due each member of the Proportionate Share Subclass is the total amount of the CMF paid by that member less the proportionate share attributable to that class member of the total permissible CMF collections. The total permissible CMF collections may be reduced to the extent those collections include amounts for fire protection, as explained in the Fifth Refund Claim, below.

Based on the data of average water use shown in Exhibit 15, together with other average use data and the amount each parcel has paid of the CMF imposed on it, the proper allocation to each parcel of the total CMF collected may be determined. For parcels where the properly calculated proportionate share of the CMF collections is smaller than the amount paid by that parcel, the Proportionate Share Subclass member who paid it is due a refund of the difference. Plaintiffs expect to be able to prove at trial the minimum refund due each overcharged parcel; the total refunds due are unknown at present, but are expected to be in the range of several hundred thousand to several million dollars. The minimum refund may be increased if it is determined, pursuant to the Fifth Refund Claim, that a portion of the CMF collections were improperly used for fire protection.

SECOND REFUND CLAIM: PARTIAL REFUND OF WMF

**FAILURE TO PROPERLY APPORTION BURDEN
(ON BEHALF OF PROPORTIONATE SHARE SUBCLASS)**

177 Plaintiffs incorporate herein by this reference the preceding allegations, and particularly reference Claim B.1.

178 The MMWD determined that, for 2019, that the amount of the WMF over \$6.29 should be based on the meter size on the property. Meter size is a proxy for water use, which means that the District has determined that a portion of the WMF should be based on water use, presumably because it has determined that part of the cost of the activities financed by the WMF is proportional to water use.

179 Plaintiffs accept the District's determination that the amount of the WMF above \$6.29 should be based proportional to water use.

180 Plaintiffs accept the District's determination that the total revenues the District sought in fiscal 2019 to collect from the amounts of the WMF billed over \$6.29, referred to here as the Meter Based Portion of the WMF, are justified.

181 The complaint Plaintiffs have with the WMF is that the Meter Based Portion of the WMF should have been determined by the average water use of the parcel, which for single family residences is set forth in Exhibit 15, just as explained above for the CMF, rather than meter size. If the Court determines that basing the allocation to single family residences on the 300 service area average water consumption figures is not sufficiently precise to comply with Proposition 218, the actual average water consumption of each parcel should be used to determine its proportionate share of the CMF.

182 The Proportionate Refund Subclass was billed a disproportionate share of the total revenue from the Meter Based Portion of the WMF, i.e., more than they would have been billed if that portion of the WMF had been properly determined by actual average water use.

183 As with the CMF, Reallocation of the WMF revenues based on actual the burden on the district, as determined by water use, will, Plaintiffs believe, result in a showing that almost all members of the Residential Customer Class with meters over 5/8" were overcharged. However, because the WMF is smaller than the CMF, and only a portion of the WMF is

1 based on meter size, the amounts of overcharges per Subclass member will be smaller.

2 **THIRD REFUND CLAIM: REFUND OF WMF**
3 **"GENERAL GOVERNMENTAL SERVICE" PORTION**
4 **UNJUST ENRICHMENT**
5 **(ON BEHALF OF RESIDENTIAL CUSTOMER CLASS)**

6 184 Plaintiffs incorporate herein by this reference the preceding allegations, and particularly
7 reference Claim B.2.

8 185 As alleged in Claim B, the WMF includes a flat fee of, in fiscal 2019, \$6.29 per parcel for the
9 District's general governmental service of "stewardship" of the watershed – activities that
10 maintain the ecosystems of the District's publicly accessible lands, enhance biodiversity,
11 reintroduce native species, enhance beauty and accessibility. All such activities are for
12 service to the public at large in substantially the same manner as it is available to District
13 customers.

14 186 As alleged in Claim B, there is no statutory authorization for MMWD, as a municipal
15 water district, to impose a flat fee for "watershed management." Therefore, that portion of
16 the WMF is *ultra vires* and void.

17 187 No service that may be apportioned to parcels in the MMWD by the imposition of
18 unlawful and void fees that have no legal foundation. MMWD's imposition of these
19 unlawful fees as property related charges in the water bills violates Art. 13D §6 in all its
20 provisions, and other applicable law.

21 188 The imposition of the flat fee for "watershed management" is in breach of the District's
22 plain, ministerial, nondiscretionary, mandatory duty to comply with California
23 Constitution Art. 13D §6 and other applicable law.

24 189 The WMF Class members have paid or will pay a flat fee portion of the WMF since July
25 2019. Respondents' improper levying of these charges represent a continuing violation.
26 These class members have been improperly charged and paid a flat fee for "watershed
27 management" although such charges were in violation of Art. 13D §6 in all its provisions
28 and other applicable law.

Respondent MMWD has been unjustly enriched by payments members of the Residential
Customer Class have made for the general governmental service portion of the WMF,
which payments should be refunded. The entire general governmental services portion of

the WMF must be repaid. The amount of the refund due each class member is the amount paid of the WMF charge that is not based on water use.

Plaintiffs allege a well-defined community of interest among members of the Residential Customer Class. In particular, Plaintiffs allege predominant common questions of law and fact, including without limitation whether Respondent MMWD has illegally imposed the WMF on Residential Customer Class members, and in what amount.

Plaintiff representatives of the Residential Customer Class have claims or defenses are typical of the class.

Additionally, Plaintiffs are class representatives and counsel are class counsel who can adequately represent the WFM Class.

**FOURTH REFUND CLAIM: FOR FULL REFUND OF WMF
UNJUST ENRICHMENT
(ON BEHALF OF RESIDENTIAL CUSTOMER CLASS)**

Plaintiffs incorporate herein by this reference the preceding allegations, particularly the allegations of Claims B.3, E, and F.

The mandate relief requested is that the Court prohibit the MMWD from imposition and collection of the WMF. If Petitioners succeed on any one of these claims with respect to the WMF, the Court will have determined that the WMF was improperly imposed and, accordingly, should never have been collected. All such improperly collected WMF fees must be refunded to those who paid the fees

As hereinbefore alleged in Claim B.3, there is no statutory authorization for MMWD, as a municipal water district, to impose a fee for “watershed management.” Therefore, the WMF is *ultra vires* and void.

As hereinbefore alleged (Claim 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. Plaintiffs allege that the “watershed management” services are subject to the election requirement for new / increased property related fees, as they are distinct and separate from the activity of “water service,” which are excluded from the election requirement. The District’s failure and refusal to conduct elections to authorize the WMF was in violation of Art. 13D §6(c) of the California Constitution.

As hereinbefore alleged (Claim F) Art. 13D, §6(a) and Gov. Code §53755 procedures for

1 adoption of a property related fee require Notice to each parcel owner and tenant of the
2 calculated amount of the fee applicable to the parcel, the basis upon which the amount of
3 the fee was calculated, and the reason for the fee or charge. The District failed to follow
4 the required procedures.

5 199 No service whatsoever is provided to property owners in MMWD by the imposition of
6 unlawful and void fees that have no legal foundation. MMWD's imposition of these
7 unlawful fees as property related charges in the water bills violates Art. 13D §6.

8 200 The imposition of the WMF is in breach of the District's plain, ministerial,
9 nondiscretionary, mandatory duty to comply with California Constitution Art. 13D §6 and
10 other applicable law.

11 201 There is a large and ascertainable class of residential water customers in MMWD who
12 have paid or will pay WMF since July 2019. Respondents' improper levying of these
13 charges represent a continuing violation. Residential Customer Class members have paid
14 the WMF, although such charges were in violation of Art. 13D §6 in all its provisions and
15 other applicable law as alleged.

16 202 Respondent MMWD has been unjustly enriched by payments for the WMF the Residential
17 Customer Class members have made, which payments should be refunded.

18 203 Plaintiffs allege a well-defined community of interest. In particular, Plaintiffs allege
19 predominant common questions of law and fact, including without limitation whether
20 MMWD has illegally imposed the WMF on class members, and in what amount.

21 204 Plaintiffs named as representatives of the Residential Customer Class are persons whose
22 claims or defenses are typical of the class for this claim.

23 **FIFTH REFUND CLAIM: FOR FULL REFUND OF CMF**
24 **UNJUST ENRICHMENT**
25 **(ON BEHALF OF RESIDENTIAL CUSTOMER CLASS)**

26 205 Plaintiffs incorporate herein by this reference the preceding allegations, particularly
27 claims E and F.

28 206 The mandate relief requested is that the Court prohibit the MMWD from imposition and
collection of the CMF. If Petitioners succeed on any one of these claims with respect to the
CMF, the Court will have determined that the CMF was improperly imposed and,
accordingly, should never have been collected. All such improperly collected CMF fees

1 must be refunded to those who paid the fees.

2 207 There is a large and ascertainable class of residential water customers of MMWD who
3 have paid and will pay the CMF from July 2019 forward. Respondents' improper levying
4 of these charges represent a continuing violation, and Residential Customer Class
5 members have been improperly charged and paid the CMF.

6 208 Respondent MMWD has been unjustly enriched by payments representative Plaintiffs and
7 the Residential Customer Class have made, which payments should be refunded and
8 restored to Plaintiffs and the Residential Customer Class.

9 WHEREFORE, PETITIONERS/PLAINTIFFS, ON BEHALF OF THEMSELVES AND THE
10 CLASS OR SUBCLASS THEY REPRESENT, PRAY FOR RELIEF AS FOLLOWS:

- 11 1. As to each claim for Writ of Mandate, issuance of a Judgment ordering the entry of a Writ
12 of Mandate: commanding MMWD to cease imposition and collection of the CMF and
13 WMF; prohibiting further imposition and collection of the CMF and WMF; commanding
14 MMWD to rescind approval of the CMF and WMF, and remove said fees from the MMWD
15 code; commanding an accounting of the fee revenues from the CMF and WMF obtained by
16 MMWD, including an accounting of the expenditures of the fee revenues to date;
17 commanding that the unlawfully obtained fee revenues, as determined by the Court, be
18 credited or refunded by MMWD to Plaintiffs and customers of MMWD.
- 19 2. As to the claim for Writ of Mandate to compel compliance with Gov. Code §66013, issuance
20 of a Writ of Mandate commanding MMWD to comply with each and every provision of
21 Gov. Code §66013 for FY 2019 and all subsequent fiscal years, and to supply Petitioners and
22 the public with the accounting information required by Gov. Code §66013.
- 23 3. As to Plaintiffs' claim for declaratory and injunctive relief: the entry of a Judgment
24 declaring the rights and duties of the parties in accordance with each and all of the
25 contentions by Plaintiffs on these disputed issues; issuance of such preliminary injunctive
26 relief as may be requested and granted by the Court, and issuance of a permanent
27 injunction commanding MMWD to cease imposition and collection of the CMF and WMF;
28 prohibiting further imposition and collection of the CMF and WMF; commanding MMWD
to rescind approval of the CMF and WMF, and remove said fees from the MMWD code;
commanding an accounting of the fee revenues from the CMF and WMF obtained by

MMWD, including an accounting of the expenditures of the fee revenues to date;
commanding that the unlawfully obtained fee revenues, as determined by the Court, be
credited or refunded by MMWD to Plaintiffs and customers of MMWD.

4. For orders- certifying this case as a class action at the Refund Claims, appointing Plaintiffs as representatives of the Class and Subclass, as requested, and appointing their attorneys as class counsel.
5. As to the First Refund Claim (Proportionate Share Subclass), entry of Judgment refunding and restoring to Plaintiffs and the Proportionate Share Subclass the improperly collected amounts of the CMF fees that exceed the proportional cost of service to the parcels for which the fee is imposed.
6. As to the Second Refund Claim (Proportional Share Subclass), refunding a portion of the WMF to Subclass members who paid more than their proportionate share of that portion of the WMF that is based on meter size.
7. As to the Third Refund Claim entry of Judgment refunding and restoring to Plaintiffs and the Class the improperly collected amounts of WMF fees imposed for “general governmental services.”
8. As to the Fourth Refund Claim (Residential Customer Class), entry of Judgment refunding and restoring to Plaintiffs and the Residential Customer Class all of the collected WMF revenue.
9. As to the Fifth Refund Claim (Residential Customer Class), entry of Judgment refunding and restoring to Plaintiffs and the Residential Customer Class all of the CMF revenue.
10. For an award of attorneys’ fees to Petitioners/Plaintiffs under the “common fund” theory, or “Private Attorney General theory” (CCP §1021.5), or such other grounds as the law allows and the Court may deem proper.
11. For costs of suit.
12. For such other relief as the Court may deem proper.

1 Dated: July __, 2020

2 MCNEILL LAW OFFICES
3 LAW OFFICES OF S. CHANDLER VISHER
4 WITTEMAN LAW OFFICES

5 By: _____
6 Attorneys for Petitioners/Plaintiffs
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