

PARKS LAND & CATTLE COMPANY INC

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Goleta, CA 93117

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March 25, 2011 File: Goleta Water District 3-25-2011

GOLETA WATER DISTRICT

#4699 Hollister Avenue

Goleta, CA 93110-1999

Phone (805) 964-6761 Fax (805) 964-7002

Attn: Ms. Beth Horn & Mr. John McInnes:

I am quite concerned about the GWD plan to raise AG rate for water. I'm not looking for a free ride, but let's not call our erratic (?) use of irrigation water, new water, that carries a cost of new meter etc. Parks Land & Cattle Company farms our 300+- acres of mature avocado trees in the Las Varas Canyon. We bought the Russell Doty 60 acre ranch; APN 79-080-23 in 1970; and planted 40+- acres to avocados in 1970! After thinning in 1990; (remove every other row): and stumping in 2008+-, we still have 40 acres of avocados to day!

We have now stumped the majority of the 50-foot tall trees, to conserve water, and lower the picking cost. The stumping removes the large upper limbs that use water, and now more energy goes to raising fruit! From 1970 to 2010 is 40 years and other than occasional tree that has died, has been replaced! Our planted acres remain the same, so water use basically remains the same, other than change in rain fall!

We irrigate avocado trees all months of the year; depending on natural rain fall. One year we had to irrigate for 11 months! The 2011 calendar year has received early fall rains; I believe started in October 2010, and with recent March rain fall; that looks like spring rains will stretch into April, we will use less GWD water than in year of "average" rain fall.

The fact that our irrigation water use may vary from year to year, it is certainly not "new" water; and should not be charged by GWD at "new water" rates.

We have thinned [remove every other tree row] starting in 1990! 50%+- of our total 300+- acres of producing trees, and have been stumped, to conserve water! That will reduce our irrigation water needs short term, but will require more irrigation in the future; as the tree grows! Some of our current avocado acres were originally planted to lemons and were the first to receive GWD water, when West Conduit was first built? [1950+-?]

Yours Truly,
Glenn E Parks
Parks Land & Cattle Company

From: John Ruskey [johnruskey@sbcglobal.net]
Sent: Monday, March 28, 2011 11:40 AM
To: John McInnes
Cc: Beth Horn; 'Fran Farina'
Subject: Public Records on increases of Fees and Rates of GWD---Depriving Public of Protest Rights under Prop 218 as to Proposed Rate Increases.

Mr. McInnes,

I am raising and setting forth below my objections to the pending process being employed by the Goleta Water District as to its continuing refusal to provide requested Public Records as to the current process concerning the proposed rate increases which are subject to the right of Protest per the provisions of Proposition 218. This is based upon the District's refusal, as exhibited per the below response to the Email to me from Beth Horn alleging full compliance with several of my prior Requests for Public records concerning the proposed rate increases. I will not reiterate my email of the 25th on the request to Meet and Confer on my more recent requests for Public Records and the complete stonewalling posture of the District as to the supplying of information which started over four months per my Request on November 11, 2010.

Accordingly, the following is a response to Beth Horn's email set forth in full below which alleges "the District has previously supplied all relevant information on the following dates". This is a legal conclusion which is not supported by the facts. For purposes of the administrative record as to the proposed increases of Fees and Rates presently being considered by the District, please submit a copy of this email to each of the Directors for their consideration per the scheduled meetings on the proposed Fee and rate increases.

The continuing unjustified refusal of the District to fully comply with the various Requests for Public Records on the proposed rate increases under Proposition 218 is depriving the public of its ability to effectively analyze the proposed rate increases per their Protest rights under Prop 218. Without full and adequate information being supplied in a timely fashion by the District, the well defined protest provisions of 218 are being trampled upon and violated by the premeditated actions of the District!

March 25, 2011

Mr. Jack Ruskey

1362 Farren Road

Goleta, CA 93117

4699 HOLLISTER AVENUE

GOLETA, CALIFORNIA 93110-1999

TELEPHONE 805 /964-6761

FAX 805/964-7002

sent via e-mail johnruskey@sbcglobal.net

SUBJECT: March 16, 2011 request for public records

Dear Mr. Ruskey:

We are in receipt of your March 16th request for public records "given to CDM on its report for NWSC".

We have conferred with the District's Administration Manager that data provided to CDM was used for both the NWSC (new water supply charge) and rates analysis.

In response to your March 16th request, the District has previously provided all relevant information on the following dates:

- November 19th 2010 (159 pages) replying to your PRA dated November 11th
- February 14, 2011 (8,000 pages) replying to item numbers 7 and 8 of your the PRA dated February 3rd

Sincerely,

Beth Horn

Executive Secretary
cc: John Mcinnes
Dave Laredo
Fran Farina
From: John Ruskey Oohnruskey@sbcglobal.net
Wednesday, March 16, 2011 2:01 PM
John Mcinnes

Sent:

To:

Cc: 8eth Horn; 'Fran Farina'

Subject: Public Records given to CDM on its report for NWSC.

REQUEST FOR PUBLIC RECORDS FROM THE GOLETA WATER DISTRICT (GWD) BY JACK RUSKEY CONCERNING COMMUNICATIONS SENT TO OR RECEIVED BY THE CAMP DRESSER MCKEE(CDM), INCLUDING ALL INTERNAL COMMUNICATIONS WITHIN THE DISTRICT, AS TO THE PROPOSED NEW WATER SERVICE CHARGE(NWSC) WHICH WAS THE SUBJECT OF A REPORT BY COM SUBMITTED FOR APPROVAL BY THE DIRECTORS AT THE MEETING ON MARCH 8,2011
DATE: March 16, 2011

The undersigned is a customer of the Goleta Water District and in that capacity is requesting the below described Public Records.

The requested Public Records described in the possession and control of various agents, attorneys, employees, officers and directors of the District are to be made available to the undersigned for inspection and possible copying within the time periods specified under the California Public Records Act.

THE REQUESTED PUBLIC RECORDS CONSIST OF THE FOLLOWING DOCUMENTS:

1. A copy of all records of all communications to or from any person or entity, or to or from anyone pertaining to the actions of the Goleta Water District (GWD), including all internal communications from any person acting on behalf of the GWD, concerning the data and information supplied for the preparation of the Report of COM to increase the District's NWSC which was prepared and presented for Board approval at the meeting on March 8, 2011. The beginning period for said records is the date of the first communications between the representatives of the GWD and the representatives of COM concerning said engineering consultants providing services to the GWD on possible fee and rate increases to be charged the customers of the GWD.
2. A copy of all records ,including any data and information supplied by any person acting on behalf of the GWD , submitted on or after the date of the initial report of COM was presented to the GWD for consideration of the NWSC at the March 8,2011 Board meeting. Said records on the proposed NWSC are to cover the period ending upon the date of the final response and production of records pursuant to this request.

1

The documents which are maintained in electronic form shall be transmitted to the undersigned by email at the earliest possible date and should not be delayed pending the review and possible redaction concerning non electronic Public Records.

The records to be delivered electronically should be submitted to me at johnruskey@sbcglobal.net. Please contact me by email if there will be any problems, objections or delays in promptly producing the above requested Public Records for my inspection and possible copying. The Response to this request for public records pursuant to the provisions of the Government Code should be sent to the undersigned by email.

When the requested documents are available for my inspection and possible copying, please contact me by email.
Jack Ruskey

I will address the allegations first per the November 19th 2010 reply of the District and then the reply of February 14th 2011.

NOVEMBER 19TH REPLY:

The reply refused the disclosure of some of the requested records on the basis that all requested records which were preliminary drafts not kept in the ordinary course of business or were attorney/client or attorney work product would not be disclosed. The District did produce 159 pages of records which were basically the records concerning bids for the consulting work on the proposed fee and rate increase, the proposal for work from CDM, the agreement between the District and CDM and a copy of the materials to be presented to the District on Proposition 218 Financial Planning and rates for water districts...."NO OTHER RECORDS HAVE BEEN PRODUCED!

FEBRUARY 14TH REPLY:

The District stated as to the new Request for Public Records from the undersigned that as to requests 1 through 6 there were no additional information since the District's November 19th reply, As to requests number 7 and 8, reference was made to the website for the agenda meet items of the January 11th Board meeting . The reference was to the " 5 Year Infrastructure Plan and the Update of the Cost of Service. No other records were produced by the District.

IN ADDITION, NO OBJECTIONS TO DISCLOSURE OF RECORDS AS BEING " preliminary drafts not kept in the normal course of business or being attorney/client or attorney work product," was raised by the District per the additional Request for Public Records submitted by the undersigned on February 3 2011. Accordingly the failure to assert the above objections was a waiver of the objections by the District as to any records which are preliminary drafts ,attorney /client or work product records!

The above facts clearly establish the District has NOT as alleged in the above quoted email from Beth Horn that the "District has previously provided all relevant information".

The undersigned, as part of the Meet and Confer submitted to the District on Friday, the 25, requests a copy of all records not previously disclosed to the undersigned per my Public Record Request dated February 3rd as to which no objections were ever claimed by the District. The failure to produced these records to which no objection were raised appears to be an act of Bad Faith by the District in an attempt to suppress highly relevant factual information from the public and the Directors, and especially Director BERTRANDO. This unlawful suppression of information by the District is depriving the public of their rights under Proposition 218 and their right to object to any proposed rate increases. Without the full and timely submission of all relevant information to the public, the right of protest under proposition 218 become a farce and the process becomes a sham!

Jack
Ruskey

March 28, 2011

From: John Ruskey [johnruskey@sbcglobal.net]
Sent: Wednesday, March 30, 2011 2:25 PM
To: John McInnes
Cc: Beth Horn; 'Fran Farina'
Subject: Objections to Reort by CDM on nwe water rates and NWSC

Objections to the Report of CDM to the Goleta Water District (GWD) as to proposed new water rates.

Camp Dresser McKee, herein after CDM, has issued its findings as to the cost of service for the GWD's three separate water systems, the Goleta West Conduit (GWC), the Recycled Water System, and the Potable Water System, the findings have been submitted for the GWD's Board meeting on March 31st. the undersigned, a customer located in the GWC, have the following Objections to the finding concerning the GWC and the proposed rate increases. Based upon the method of analysis used by CDM, if the proposed new rates for customers of the GWC are not valid, then the findings and proposed new rates for the Potable Water System and the Recycled Water System are also invalid.

1. GENERAL OBJECTIONS TO THE METHODS USED BY CDM IN THE PREPARATION OF ITS FINDINGD PER COST OF SERVICE AND THE PROPOSED NEW WATER RATES.

THE UNDERSIGNED IS AN ATTORNEY WITH OVER 40 YEARS OF CIVIL TRIAL EXPERIENCE INVOLVING COMPLEX FINANCIAL BASED DISPUTES AND THUS IS WELL EXPERIENCED IN REPORTS OF EXPERTS SINCE ALMOST EVERY MATTER HANDLED INVOLVED THE PARTIES RELYING UPON EXPERT WITNESSES. THERE ARE CERTAIN FUNDAMENTAL THINGS THAT ALL EXPERTS NEED TO ESTABLISH IN ORDER TO HAVE ANY CREDIBILITY AS TO THE CONCLUSIONS REACHED IN THEIR REPORT. THE PROCESS USED IN THE CDM REPORT HAS CERTAIN SIGNIFICENT DEFECTS WHICH WILL BE SET FORTH AS FOLLOWS:

The cost of service analysis uses as its base period the financials and data from the GWD for the fiscal year 2008-09. This use of a period of time which is not the most recent time period I e. the fiscal year 2009-10, raises the question as to why the prior period was selected. There is no explanation as to why the most current set of data and financials for the fiscal year 2009-10 was not used by CDM. The time period selected by the expert for the base line data analysis can have a profound effect on the conclusions reached by the expert. Therefore, why was the 2008-09 period selected instead of the more current period of 2009-10? The undersigned through Requests for Public Records have asked for copies of all of the work papers used by CDM in the preparation of its Report and the GWD has refused to produced any of the records reflecting the analysis done by CDM as being drafts which the GWD ,per the advice of its legal counsel does not disclose. Thus there has been no disclosure or explanations as to the use of the earlier time 2008-09 period by CDM.

To further reflect upon and examine the questionable use of the 2008-09 financial data, the GWD for its audited financials for 2009-10 hired a new accounting firm. Upon the conclusion of its audit, the new accountants, Nasif, Hicks, Harris & Co, issued a letter to the Board of the GWD commenting on areas of both Material Weakness and Significant Deficiencies. The following is a sampling of some of the comments by the new accountants as to the validity and reliability of the prior financial statements and the books and records of the District:

“Management Oversight over financial Reporting.

The district’s accounting department has not a satisfactory system on internal controls over financial reporting; similarly, there has been a lack of supervisory oversight. Work product has been less than adequate, it is apparent that this situation has existed for at least the past five years. THIS WEAKNESS HAS LED TO MATERIAL MISSTATEMENTS OF PRIOR YEAR’S FINANCIAL STATEMENTS AND MISSTATEMENTS IN THE JUNE 30,2010 GENERAL LEDGER , BOTH OF WHICH HAVE BEEN CORRECTED DURING THE PROCESS OF OUR AUDIT...MATERIAL MISSTATEMENTS TO THE JUNE 30,2009 FINANCIAL STATEMENTS AND THE JUNE 30,2010 GENERAL LEDGER ARE DISCUSSED BELOW:”

The specific comments were for 5 separate areas of errors in the GWD’s Capital assets Accounts. The restatement for periods prior to June 30, 2009 was for \$1,225,771. The financial statements for the year ended June 10, 2009 were restated by \$488,985 and the general ledger for June 30, 2010 was adjusted for \$443,780. Thus the errors totaled several millions of dollars per the audit report, yet CDM in spite of the accountant’s comments chose to use the stale financials with all the errors and not the most current 2009-10 financials where all the prior year’s financials had been corrected. Why the conscious decisions to use acknowledged financials which has incorrect financial information?

The 2010 audit report continues on for several additional pages discussing the multitude of accounting problems and recording errors as to the 2008-09 financials used by CDM.

I have no explanation or rational reason why the patently defective old financials were used for the collection of the relevant data required for a cost of service analysis except for the possibility the use of the old data from 2008-09 gave a “better” result for the District in justifying higher rates.

The complete audited financials for 2009-10 and the audit report of the accountants are on the District’s website for full descriptions of all of the Material Weakness and Significant Deficiencies of the GWD’s financial data.

2. SPECIFIC COMMENTS AS TO THE ERRORS AND OMISSIONS CONTAINED IN THE COST OF SERVICE ANALYSIS FOR THE GWC.

The information used in the cost of service analysis for the GWC has many errors which taint the conclusions reached by CDM as to the cost of service. The specific errors will be identified by category and without any detailed analysis as to the specific mathematical consequences caused by said errors or omissions.

A. THE COMPLETE FAILURE TO CONSIDER THE EFFECT OF THE PROPOSED RATE INCREASES AS TO THE FUTURE AMOUNT OF WATER USED AND THE TOTAL REVENUES GENERATED BY SAID RATE INCREASES.

The Report and recommendation of CDM makes the erroneous implicit assumption that the total water use by each class of customer will remain the same and in fact increase without any impact being caused by the proposed increase in rates. This is contrary to the well established economic principal that at various price points, the use of a community will decrease as its unit cost is increased. The reason for the cost of service study and Recommendations was to raise the

total revenues for the District per the adoption of higher rates. Thus there is no information or data supplied to the Directors and the public as to the correct amount of future revenues which will be generated by the proposed rate increases! Thus, if the "Elasticity of Demand" for water for particular customers is not specifically considered, the proposed rate increase may well depress the use of water to such an extent that the total revenues generated by future water sales to those customers will actually generate less total revenues for the District! Thus to adopt the proposed water rates without this key piece of data will be a capricious and arbitrary action by the Directors and a breach of their fiduciary duties.

The preparation of an expert analysis of the Elasticity of Demand on each class of customer per the various possible rate increases is required before any new rates are adopted. It appears that CDM would not be a qualified expert on the application of the elasticity of demand as to future revenues. The District learned per its prior use of an expert for its Citizen Rate Study which was conducted several years ago that with certain prices of water there would be a significant decrease in total consumption by the customers of the District. The reckless setting of new water rates can be counterproductive to raising total revenues.

The consideration of the proposed rate is premature until this is an expert report on the elasticity of demand for consideration of the Directors.

B. FAILURE TO CORRECTLY IDENTIFY THE EXACT AMOUNT OF GWD WATER USED BY THE CUSTOMERS LOCATED ON THE GWC.

The CDM analysis and Report states at page 12 of attachment 1 that there are 27 customers who receive raw water on the GWC. The report also states the District has two water wheeling agreements for deliveries on the GWC. There is no information to determine whether the water per the Water Wheeling contracts is actually included in the water use by the customers on the GWC. To include the amount of water per the water wheeling contracts to the use of GWD water by customers on the GWC would be improper and is an artificial inflation of the Water actually used on the GWC. All the water transported by the Wheeling contracts is by definition water that is not GWD water! It is only transported by the pipes of the GWD per requirements of State law and the charge for this service by the GWD is the actual costs incurred by the GWD in carrying the water. Thus, in addition to the actual water not being charged to the customers of the GWC the associated expenses to carry the water is reimbursed to the District and must be applied against the cost of service item covered by said reimbursements. The materials prepared by CDM do not disclose how the water and expenses per the wheeling contracts are imputed per the cost of service data. However at table 1b, page 138, CDM included the water wheeling (conveyance customers) in the current use of facilities per water use. This inclusion causes an overstated of the amount of GWD water used by the GWC customers. It included non GWD water which was transported through GWD pipelines as being GWD water actually used by the GWD customers.

CDM at page 12 of attachment 1, in the next paragraph after stating there are 27 customers on the GWC, then states "Most Agricultural customers are served by the potable water System, in addition to 25 receiving raw water via the GWC." Thus on the same page of the cost of service analysis CDM uses two different numbers for the total of customers on the GWC. Clearly one of these numbers must be wrong!

The undersigned in December of 2010 filed a Request for Public Records seeking records to establish the number and water use of all of the customers on the GWC. The records were initially not produced by the GWD and finally after a face to face meet and confer session with the District's attorney and some of the staff of the GWD and then some

required follow up correspondence, I was provided a searchable excel spread sheet that was represented to me by the attorney for the District to contain all of the customers of the GWC. I have just again reviewed this record in my preparation of these Objections of the CDM cost of service analysis. The provided work sheet contains data for 25 accounts, two of which are described as SFR and one as MFR. In any event it is clearly not 27 customers as cited in the CDM cost of service analysis. The 2 extra accounts used by CDM reflect approximately an 8% overstatement as to the number of customers on the GWC. Thus the analysis and computations used by CDM are not accurate as to the true cost of service for the customers on the GWC. it now appears that the total number of customers who receive GWD water is unclear since possibly some of the 25 accounts supplied me by the GWD may cover accounts of Conveyance customers who do not receive GWD water and are be charged the wheeling fees per the contract with the District. This ambiguity needs to be resolved before any rate increases are adopted by the Board.

C. THE COST OF SERVICE ANALYSIS FAILED TO ADJUST THE DISTRICTS ASSETS ON ITS FINANCIALS FOR THE VALUE OF ASSETS DONATED BY CUSTOMERS AND OR DEVELOPERS TO THE DISTRICT.

The GWD has had a practice over the years to require customers and developers to incur the expenses of the construction of certain water related physical assets which were donated to the GWD as part of the completion of a particular water project and the value of the donated assets were placed on the books of the District at their fair market value. Thus these are assets which were never an expense to the District and need to be identified and removed from the computations of the cost of Service. These types of transactions are discussed in the Nasif, Hicks, Harris & Co 2010 audit report. See page 72 of management letter and page 27, footnote 18 of the financials. The undersigned filed a Public Record Request for the records concerning the donated assets but no records have yet been supplied and thus the values of these donated assets is still unknown.

D. CDM IN ITS COST OF SERVICE ANALYSIS SELECTED TO USE THE WATER CONSUMPTION FIGURES BASED ON FISCAL YEAR 2008-09 AND NOT THE AVERAGE AMOUNT OF WATER CONSUMED FOR THE LAST THREE FISCAL YEAR PERIOD.

The undersigned per a Public Record Request filed on the GWD for the data given to CDM for its use in the cost of service analysis was given records for the GWD customers which had the actual water consumption for the last three years, the average for the 3 year period was significantly different than the amount of water attributed by CDM to the customers of the GWC. The use of one year water consumption is an unreliable amount since the records of the GWD show that the total amount of water has had significant fluctuations in the total amount of water used from one year to the next year Thus, the use of a three year average gives a truer picture of the usual consumption pattern of the customers. To over inflate the amount of water on the GWC increases the amounts of expenses chargeable to the GWC. Possibly this is why CDM choose to use the fiscal year 2008-09 for its cost of service since it may have given the higher level of water use . It should be noted that the cost of service analysis done for the GWC shows that there has been revenues received from the water sales to the customers on the GWC which exceed the cost of providing said water. See figure 2, page 17 and figure 3, page 18. There has been a 6% difference which means the customers have been overcharged per the rates they have been paying in the past and are currently being charged. However this past

overcharging does not deter CDM from recommending significant increase in the water rates for the customers on the GWC.

- E. THE GWD HAS REFUSED TO SUPPLY PER PUBLIC RECORD REQUESTS THE WORK SHEETS AND DRAFTS OF GDM'S RECOMMENDATIONS AND REPORTS ON BOTH THE PROPOSED RATE INCREASES AND THE ADDITIONAL FEES FOR THE NWSC.

The undersigned has filed with the GWD Public Records Requests to receive a copy of all drafts and work sheets used by CDM in the preparation of its reports on both the rate increases and the increase of fees per the NWSC. The records have not been produced to the undersigned on the basis they are preliminary papers and drafts and attorney client and work product privileged records. The undersigned efforts to have a meaningful meet and confer on the failure to produce the requested records have been rejected by the GWD. A detailed letter has been sent to the GWD citing and discussing its failure to disclose the requested records are in violation of the provisions of the Public Records Act and decided case law as to the privileges cited by the District in its refusal to disclose the records requested. The records were requested based upon my legal experiences that said drafts, work sheets and legal opinions used by an expert, such as CDM, are ordinary and necessary for any type of complete review and analysis of the expert's recommendations and report. The undersigned has been supplying the Public Records obtained concerning the data supplied by the GWD to CDM per the pending matters to other members of the public and to their professional advisors for their use in the exercise of their proposition 218 Protest Rights. The failure to receive the materials used by CDM in the preparation of its Reports is due to the calculated planning of the GWD to deprive its customers of relevant data required for the exercise of their rights under Proposition 218. Accordingly, as a matter of fairness and due process, the review of the recommendations and reports of CSM must be deferred until all requested data has been provided by the GWD to the customers per the pending Public Records request of the undersigned.

Director BERTRANDO in a communication with him this morning, continued to express his need for said Public records concerning the Reports of CDM in order for him to do the analyses required on the need for the proposed NWSC and increased water rates.

- F. FINALLY, IT IS CLEAR THAT CDM HAS COMPLETELY IGNORED ANY ANALYSIS AS TO CUSTOMERS OF THE DISTRICT WHO RECEIVE WATER SERVICE PURSUANT TO THE TERMS OF THE AMENDED JUDGMENT IN THE WRIGHT CIVIL ACTION.

The GWD per the specific terms of the Wright Judgment entered into a multitude of exchanges of customers' wells for metered water service which had specific provisions as to the cost to be charged the customers for obtaining metered water service. The records of the GWD were in disarray when the District could not provide me with copies of these agreements per a PUBLIC records Request. It is unknown if the records of the GWD have been searched to locate the contracts with all of these customers. In addition, I have been informed by a knowledgeable person that certain persons

intend to exchange their wells for metered water in the near future. There needs to be taken into account these special customers as to the rates to be charged them for their water. There is currently a large unfilled gap in the cost of service analysis by CDM and until the proposed rates for this class of customer is reviewed. All other proposed water rate increases for the other classes of customers are not accurately stated.

This email is to be part of the administrative record of the pending deliberations on both the NWSC and proposed new water rates. A copy is to be delivered to each director and posted on the District's web site.

Jack Ruskey

March 30, 2011

From: John Ruskey [johnruskey@sbcglobal.net]
Sent: Wednesday, March 30, 2011 2:43 PM
To: John McInnes
Cc: Beth Horn; 'Fran Farina'
Subject: Objections to report of CDM on NWSC

OBJECTIONS TO THE ADOPTION OF THE PROPOSED NEW WATER SERVICE CHARGE (NWSC) BY THE GOLETA WATER DISTRICT (GWD) PER THE RECOMMENDATIONS OF CAMP DRESSER MCKEE (CDM).

At a scheduled board meeting of the GWD on Thursday, March 30th there will be consideration of the adoption of an increased fees schedule for the existing NWSC. The proposed new fee schedule is based upon the Report and Recommendations of CDM as the consultant /expert for the District.

The proposed action for adoption of the fee schedule is being recommended by CDM pursuant to the provisions of sections 66000 of the California Government Code. The proposed fee increases, if they comply with the requirements of the Government Code, can be done by majority vote of the Board of the District and not subject to the protest provisions of Proposition 218. However, if the basis of the proposed increases in the NWSC fees fails to satisfy the statutory requirements of section 66000 et seq. of the Government Code then any approval of the increased fees under the NWSC by Board action is void since the fee increases are subject to the provisions of Proposition 218, including the protest rights of the customers of the District.

The alleged basis for the proposed fee increases of the NWSC are to reimburse the current customers of the District for their investment in extra capacity in District facilities and SUPPLY CONTRACTS for use by future customers. (Emphasis added).

The provision of the SAFE ORDINANCE authorized the District to join other water users as being part of the State Water Project. The District in joining the State Water project did not buy or acquire ownership of any capital assets used in the delivery of State Water and the financial obligation incurred by the District was merely to repay the State's cost of constructing the network of facilities required to transport water from Northern California to Southern California. Upon the full payment of the cost of State Water which is in excess of 150 million dollars, the GWD shall not obtain title to any physical assets or facilities constructed and owned by the State. The adoption of the provision of the SAFE ORDINANCE was to give reliability of water supplies to the existing customers of the District and the use of State Water was restricted to the use of the existing customers and not for the purposes of fueling growth by having a substantial new supply of water for future customers. Only upon the satisfaction of various conditions as specified in SAFE was the District authorized to issue meters for up to 1% of the District's potable water supplies for use by new Customers.

CDM stated the following in support of the increases in the rates of the NWSC:

"New water Supply Charge---What it Pays For

The NWSC reimburses current customers for their investment in extra capacity in District

Facilities and supply contracts for use by future customers."

Agenda item # 2, attachment 4, and Page #122. (Herein after references to CDM's Report will be done by page number.)

The above statement is an artfully worded effort in an attempt to make the basis of the proposed fee increases of the NWSC to conform to the requirements of 66000 et seq. of the Government Code. The reality of the computation of the proposed fee increases is that the vast majority of the fees increase are solely attributable to the cost of \$151,883,738 for the State Water contracts and plus an exceedingly tiny amount for the alleged build out use of the District's facilities. The cost of the built out facilities per the West Conduit Water system was stated to be \$1,098 in arriving at the new unit cost of \$40,250.00 per acre foot as the increased fee for new water either for new customers or for current customers who wish to have additional water per new meters..Thus, over 97% of the increase of the fees for the NWSC to customers on the West Conduit is attributed to the contract with the State to receive State Water and less than 3% attributed to the District's physical facilities which were alleged to be for the build out extra capacity of the West Conduit's facilities. The offered justification per the NWSC is clearly the case of the tail wagging the elephant.

The undersigned is informed that the vast majority of the limited physical facilities of the West Conduit were fully constructed long before the adoption of the SAFE ORDINANCE and nothing new has been added to the facilities after the approval of taking State Water starting in 1996. In fact, the GWD's Response to the undersigned Request for Public Records concerning the maintenance and improvements concerning the physical facilities of the West Conduit was that the District's records did not identify any repairs or improvements done on the West Conduit since all of the District's records of such items could not identify any maintenance or repairs which were done on the West Conduit. The District's records on maintenance and repairs were maintained as to the District's entire system with no allocation to the West Conduit facilities. See Page #125 .as to CDM's computations for the fees for the NWSC on the West Conduit. The undersigned could not locate the information used by CDM as supporting data as to any of the West Conduit's facilities which were constructed as extra capacity to handle State Water.

The provisions of section 66000 of the Government code specifies that fees mean a monetary extraction other than a tax or special assessment ,whether established for a broad class of projects by general legislation of general applicability or imposed on a specific project on an ad hoc basis , that is charged by a local agency to the applicant in connection with approval of a development project for the PURPOSE OF DEFRAYING ALL OR A POETION OF THE COST OF PUBLIC FACILITIES RELATED TO THE DEVELOPMENT PROJECT..."(emphasis added) Section 66000(b) of Government Code.

Thus the fee must be for a "Public Facility "which is specified as being a public improvement ,public services and community amenities per section 66000(d) of the Government Code. A service contract like the contract for State Water is not within the definition as a public facility. The service contract for State water grants no rights in any asset which is or in the future will be owned by the GWD. The District makes the specified annual payment for State water whether any State water is actually delivered in the year of payment. The amount of the payment is fixed and does not change as to the change of the number of customers who are served by the GWD. The annual payment if or State Water is similar to a lease payment and at the end of the year for which payment was made, there is no residual value left for the benefit of the GWD.

The requirements for establishing ,increasing ,or imposing a fee ,the local agency must do certain things per section 66001 , including the public facility being identified ,the relationship between the user's fee and the type of development project upon which the fee is based, the reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributed to the development on which the fee is imposed. See section 66001(a) et seq. The alleged "reimbursement to existing customers "used by CDM does not comply with the requirements of section 66001 et seq. of the Government Code. Since reimbursements to o existing customers fails to comply with the requirements of the Government Code, the proposed fee increases cannot be adopted by the Board and any such fee increases must comply with the requirements of proposition 218 and the right of protest by the customers.

Therefore the alleged purpose as clearly stated by CDM that the NWSC is to reimburse current customers for their investment in extra capacity in the District's facilities and supply contracts for use by future customers does not conform to the fees allowed pursuant to section 66000 et seq, of the Government Code. The overwhelming amount of the NWSC is based upon the contract with the State for the future delivery of State Water and does not by any stretch of the imagination involve any of public facility of the GWD. Upon the eventual payment of the over 151 million dollars, the GWD will have no public facility type asset which is required per the fees authorized per the applicable sections of the Government Code.

The undersigned has requested Public Record as to any legal memorandum which would be applicable to the Government code per the expert opinion of CDM, but on multiple occasions have been advised by the GWD that it would not produce any records reflecting the legal analysis done by CDM and the GWD as to the NWSC and the provisions of the Government Code. This stonewalling by the GWD of highly relevant information which may have been used by CDM in the formulation of its expert Report and Recommendations is highly prejudicial to the interests of the customers of the District with the probable consequence of depriving them of the rights granted them by the provisions of Proposition 218.

In addition to the above questions as to the availability of the use of sections 66000 et seq. of the Government Code, there is a complete factual and analytical disconnect between CDM's Report and Recommendations as to charging the customers of the West Conduit additional NWSC fees for State Water while in its Cost of Service analysis , for well stated reasons, determined that the cost of State Water is NOT to be charged to the customers of the West Conduit as part of the proposed rate increase being recommended .CDM in its march 18th letter to the GWD per it Cost of Service Analysis ,made the following statement at page one:

“District currently has an implicit policy recognizing that certain District costs are required to Deliver customer benefits that should not be allocated to Agricultural customers. Specifically The District has a policy that the cost of water supply reliability and potability do not benefit So the COST OF STATE WATER SUPPLY and its treatment should not be applied to those Customers. Setting the District's rates and charges based on this policy is consistent With State law, and is reflected in this cost of service analysis.” (Emphasis added) page 7.

If State water is exempt from the cost of service per fixing rates and charges, state Water costs should likewise be excluded from computing the fees for a NWSC.

Per the objections recently sent as to the proposed rate increases, those objections are fully incorporated herein as to the lack of any competent data as to the elastcty of Demand on water per the proposed increase in the NWSC. The actual experience as to the customers on the GWC clearly shows the increase of the NWSC for those customers will generate no new revenue for the District. In addition the failure of the District to produce the work sheets, drafts, and legal memorandum of CDM is fully adopted herein as to the public and the directors needs as to understanding and evaluate the proposed rates for the NWSC recommended by CDM.

As part of the administrative record, please submit of copy of this email to each of the directors for their consideration on the proposed new fees per the NWSC and post this email on the District's web site.

Jack Ruskey

March 29, 2011