

March 4, 2014

Board of Directors
Eastern Municipal Water District
Attn: Board of Directors
PO Box 8300
Perris, CA 92572-8300

SENT VIA: EMAIL & USPS

RE: Paso Robles Groundwater Basin

Dear Board Members,

In Kevin Pearson's February 19, 2014 letter to the editors of the Cal Coast News & the San Luis Obispo Tribune, he wrote that he was "setting the record straight". Mr. Pearson, the Public and Media Affairs Officer for Eastern Municipal Water District ("EMWD"), was responding to my February 17, 2014 op-ed in which I questioned the true basis for EMWD's interest in the Paso Robles Groundwater Basin ("PRGWB") and referenced EMWD's connection to the Kern Water Bank and an email authored by Mr. Wayne Lemieux, outside counsel for EMWD. Unfortunately, Mr. Pearson's letter, combined with a number of other factors tying EMWD to recent activities in the PRGWB, only raises more questions and cause for concern.

In his response to my op-ed, Mr. Pearson states: "Perris-based Eastern Municipal Water District has never conducted groundwater banking within the Paso Robles or Kern County regions. While the law firm of Lemieux & O'Neill do serve as outside legal counsel for EMWD, the letter Ms. Steinbeck describes that was distributed to landowners in the region was not drafted or delivered on behalf of EMWD." These carefully-couched statements, however, are misleading, and I believe that both your Board and the general public deserve to know "the rest of the story," since it is not as simple as Mr. Pearson's letter would lead people to believe.

EMWD'S CLOSE TIES TO MWD AND WATER BANKING PROJECTS

It cannot be denied that EMWD has a strong interest in importing water from reliable sources, and also in obtaining the least expensive price for its imported water. This interest has only been amplified by the past few years of drought and the fact that State Water Project ("SWP") deliveries have been reduced to 0% this year. EMWD is a member of the Metropolitan Water District of Southern California ("MWD"), and 51% of its water is imported from MWD. MWD "banks" a substantial amount of water in Semitropic Water Storage District in Kern County and elsewhere; therefore, EMWD plainly does have an interest in MWD's "banked" water in Kern County. To say that EMWD has never banked water in Kern County is, therefore, misleading and incomplete, and obfuscates the close relationship between EMWD and MWD.

The ongoing and disturbingly close relationship between EMWD and MWD was recently brought to light in a lawsuit by the San Diego County Water Authority against EMWD, whereby EMWD was shown to have spent over \$60,000 of ratepayer money to hire a Sacramento-area public relations firm, California Strategies, to push MWD's agenda and promote MWD's image in San Diego County. San Diego County has long been a dissatisfied customer of MWD, and has sued MWD for allegedly overcharging for the cost of transporting Colorado River water to the region. Recently, on February 25, 2014, the court ruled that MWD had indeed violated the California Constitution by overcharging for the transport of water through its facilities. Under Proposition 26, approved by voters in 2010, public agencies like MWD must prove that they are charging ratepayers no more than the actual cost of providing services. In light of the recent court decision, ratepayers of EMWD should be incensed that MWD has been charging other member agencies more than necessary (which likely means that EMWD has been overcharged as well), but also that EMWD agreed to fund the PR campaign on MWD's behalf. Evidently, the relationship between EMWD and MWD has never been cozier.

MWD has been involved in several questionable banking and water "transfer" schemes over the years, most recently the failed Las Posas Aquifer Storage and Recovery Project in Ventura County, in partnership with the Calleguas Municipal Water District. In that water banking project, which has cost over \$150 million total, MWD spent \$54 million in taxpayer funds, which Calleguas ratepayers were forced to pay back when MWD backed out of the deal several years later. To add insult to injury, Calleguas landowners were left with water levels far lower than they started with, despite several years of "banking" under MWD's watch. Some people speculate that the district never injected enough water into the basin before making withdrawals. Regardless of the cause, a local City Council member in Moorpark, California—a city that was supposed to be "drought-proofed" by the project and which has found itself anything but—recently noted that: "The thing that's frustrating as an elected official is that a lot of these water decisions and impacts are made up in the Sacramento area by the Metropolitan Water District." As discussed below, it appears that the Ventura area is not the only place that MWD has been pressing its agenda, using its connections in Sacramento.

EMWD & MWD'S RECENT TIES TO THE PASO ROBLES AREA

As noted above, both EMWD and MWD would benefit from a new, reliable, and cheap source of water. This is particularly true given the shortages of state water and the scam that has become the water transfer market in recent years. The PRGWB has long been recognized as the largest aquifer in the western United States. Perhaps it should not be surprising, then, that numerous individuals closely tied to EMWD, MWD, and other entities have recently been cropping up in the Paso Robles region.

For instance, Randy Record, current EMWD Board Vice President and MWD First

vice Chair, has been openly consulting a local group that refers to itself as Paso Robles Agricultural Alliance for Groundwater Solutions & Pro Water Equity ("PRAAGS/PWE"). PRAAGS/PWE have been pushing for the formation of a PRGWB District to manage the whole basin, some 505,000 acres, with an estimated storage capacity of over 30 million acre-feet. In addition to being a current member of your Board and your appointee to MWD, Mr. Record is also the immediate past president of the Association of California Water Agencies ("ACWA"), the most powerful industry and lobbying group on behalf of water districts in the state. While Mr. Record has characterized himself in local media articles as "just a member of PRAAGS and someone who has an interest in the area," the chairman of PRAAGS has called him "instrumental" in advising the group.

Notably, in addition to Mr. Record, PRAAGS/PWE is also being counseled by current general counsel of the Kern Water Bank, Ernest Conant. Indeed, it is apparent that Kern County water interests are also strongly influencing the PRAAGS/PWE proposed District, but that is a topic for another letter.

To focus on EMWD's connections, I think you will be interested to know that, in addition to your Board member Mr. Record, two different lawyers connected to EMWD and MWD have also been very active in the area recently. Mr. Wayne Lemieux, of the firm Lemieux & O'Neill (who serves as outside counsel to EMWD), recently sent an email to Randy Record stating his opinion that landowners who had pushed to fully litigate their rights in the Santa Maria basin adjudication (using the same attorney that I and other Paso Robles landowners have hired to protect our rights) "lost" in that case. With or without Mr. Lemieux's knowledge, Mr. Record forwarded that email to a Paso Robles area landowner and a PRAAGS board member stating "send it to whomever you like"—the clear implication being to use it to dissuade other individuals and/or PRAAGS members from joining the quiet title lawsuit I and other landowners have filed to protect our overlying rights in the PRGWB. As Board members of a water district, each of you must know that any District that would be formed in the PRGWB would be the most junior of appropriators if the basin were to be adjudicated today, and so dissuading landowners from joining an adjudication lawsuit could only be to the benefit of those who want to form a district.

I'll get to how a PRGWB District would benefit EMWD in just a moment, but you should also know that MWD's outside counsel has also been active in the Paso Robles area. Mr. Rob Donlan, of Ellison, Schneider & Harris, outside counsel to both MWD and the ACWA, recently drafted an "urgency ordinance" governing groundwater use in the PRGWB for the County of San Luis Obispo. The ordinance effectively flips the pumping priorities established under California law by restricting any increased pumping on the part of rural or agricultural residents in the basin, while exempting municipal purveyors. In a groundwater basin that is suspected to be in overdraft, this could lead to claims of prescription by the municipal purveyors against the overlying landowners. The County enacted this ordinance over a mere 6 week period last summer and despite much public outcry.

Never once, however, did the County mention that it would be hiring outside counsel to prepare this ordinance, and it certainly didn't mention that it would be using the law firm who is also outside counsel to MWD and the ACWA, entities in which Mr. Record, perhaps not coincidentally, also plays a key role.

THE FORMATION OF A PRGWB DISTRICT WOULD BENEFIT EMWD & MWD

The type of Water District that PRAAGS/PWE is promoting for the PRGWB is a California Water District under Water Code §§ 34000 et seq., with a slightly modified Board of Directors. The powers of the proposed District include the ability to do "exchanges" with other agencies. (Water Code § 35403) The district can cut exchange deals with any agency in the state, including other districts and private corporations. (Water Code §§ 35850.5-35851). Essentially, once the proposed PRGWB District is formed, it will be a viable entity for EMWD, MWD, and others (such as the Kern County interests, including Semitropic) to partner with on water banking and/or water exchanges. Without the formation of such a district, these entities would have no practical ability to access PRGWB water, utilize the "storage space" in the Basin, or conduct "exchanges" or "transfers" involving PRGWB water. Board members of PRAAGS/PWE have specifically stated in public forums that they want the PRGWB District to have export and exchange powers so that it may conduct exchanges with other districts.

I have had numerous conversations with many of the local farmers who would be creating this water district. None of them have any knowledge of the "emerging water markets" based on private trades of SWP water, nor the impact such water transactions will have on our PRGWB and their overlying water rights. In addition, they have been entirely unaware that outside entities such as EMWD, MWD, the Kern Water Bank Authority, or Semitropic Water Storage District have a strong interest in the creation of a water district with export and exchange powers above the PRGWB. They are equally unaware that the adjudication option allowed under California law for the PRGWB is not in the best interests of these entities as that option would substantially limit the business opportunity and future profits that they could receive by exporting water from or banking water in the PRGWB. They are unaware of any of these crucial considerations because they are not being told of these considerations by the people who are purporting to give them honest advice, the very same people who are also associated with EMWD, MWD, and others.

EXPORTATION AND EXCHANGES OF SWP WATER

I don't expect you and others reading this letter to fully appreciate the threat facing Paso Robles landowners unless you also understand the issues involving the SWP, its "allocations," and over commitment. On October 26, 2012, *Testimony on Water Availability Analysis for Trinity, Sacramento, and San Joaquin River Basins Tributary to the Bay Delta Estuary* was provided to the State Water Resources Control board (SWRCB) – the full study can be found at http://c-win.org/webfm_send/265. For your convenience I have included a summary.

This Testimony shows conclusively that the SWP has been many times overcommitted. The Testimony was based on a 3 year Public Records Act request that quantified the amount of water available in all the watersheds leading into the Delta compared with the amount of water promised in both the Central Valley Project (CVP) and the SWP. Furthermore, SWP has the most junior water rights of all appropriators taking water from the Bay Delta Estuary. The quantification proved that there are 29 million AF available and that a little over 153 million AF have been promised through permits. These facts should be acknowledged and the SWRCB's representations brought more in line with what is actually available in the real world.

This Testimony shows why SWP contractors and subcontractors have a clear financial incentive to “exchange” and/or “bank” their fractional SWP “allocations” with water districts that can provide real “wet” water. Based on the testimony referenced above, the reality is that these SWP allocations will never materialize because their value is only fractional. Thus, the exchange of real water for SWP allocations results in uncompensated loss of groundwater in districts where it occurs. Many other areas governed by districts, including the areas governed by the Kern Water Bank Authority and the Calleguas Water District, have found this out, but much too late. Ultimately, groundwater levels drop, and the landowners are left suffering the consequences, while the purveyors make out like bandits.

This is exactly what could and almost certainly would occur with water from the PRGWB if the proposed water district were put in place. Via the PRGWB District, the Basin could then be accessed to meet the needs of SWP contractors seeking exchange partners with both “wet” water and storage capacity on hand. According to studies that have been generated by the County of San Luis Obispo which are discussed more below, the PRGWB appears to have both. Thus, plainly it is in EMWD's interest to have an exchange partner entity in the PRGWB that can “exchange” real wet water for empty SWP allocations. Just as plainly, it is not in the PRGWB's best interests to do “exchanges” or “bank” SWP water as this will result in native groundwater being exported.

I think most would agree that crucial water should not be traded away via exchanges that are unregulated and based upon grossly inflated values. At the least, the landowners being duped into consenting to this scenario and giving up their overlying rights should be fully and honestly advised about it beforehand.

THE PURPORTED “CRISIS” IN THE PASO ROBLES GROUNDWATER BASIN

The primary evidence upon which the San Luis Obispo County Board of Supervisors relied upon to justify the passage of its “urgency ordinance,” which led to the suspicious and subsequent push to form a water district, is an August 2013 “basin conditions” report by GEI Consultants. Interestingly, GEI Consultants is also the consultant for Kern County's Semitropic Water Storage District (which, as noted

above, MWD and this EMWD “banks” water with). The hydrograph map produced by GEI was used to justify the existence of a water “crisis” and the passage of an Urgency Ordinance that severely impacts overlying rights and inverts the normal pumping priorities under state law. (Notably, directly conflicting data was provided by a hydrograph map produced by the more objective Todd Engineering firm that was released just a couple months later in December 2013, *after* the Urgency Ordinance was passed.) In reaction to the perceived “crisis” caused by GEI’s hydrograph, the SLO County Board of Supervisors also recently approved the spending of over \$700,000 of public funds on a contract with Carollo Engineers to study “supply side options”, including the analysis of SWP “exchange” options. Interestingly, Carollo Engineers is one of EMWD’s long-standing consultants.

On its own, GEI’s crisis-causing map would only be somewhat suspect. However, the deep concerns grow when GEI’s biased information is combined with, among other things, (1) the urgency ordinance that followed was prepared by outside counsel for MWD and the ACWA; (2) PRAAGS/PWE, the entity lobbying for the formation of a District in response to this “crisis,” has been consulted by individuals closely affiliated with EMWD and MWD; (3) PRAAGS/PWE has resisted all efforts to restrict the export or exchange powers of any future PRGWB District, and has explicitly named Semitropic as a future exchange partner; (4) Carollo Engineers, who has a long-standing relationship with EMWD, has been hired by the County of San Luis Obispo to analyze “exchanges” as a “supply side option” for the PRGWB; and (5) various individuals closely connected to EMWD are advising PRGWB landowners NOT to file quiet title to defend their overlying rights and/or to form a district without providing full disclosure of their possible conflicts. The potential conflicts of interests here are endless and deserve further investigation and serious consideration by your Board.

ACTIVITIES IN THE PRGWB FOLLOW A PATTERN BY EMWD & MWD

Advice from individuals closely connected to EMWD, MWD, Semitropic, and the Kern Water Bank Authority appears to have led to the following actions in my County: (1) the manufacturing of a “crisis” (but not overdraft, apparently), in the PRGWB and the passage of an urgency ordinance which hurts overlying landowners and engenders fear and a sense of urgency in all residents; (2) a proposal to create a California Water District which will be formed, via our local LAFCO, based on acreage alone. This means that less than 2% of the affected individuals (around 30 landowners) will be able to force 98% (over 5,000 unique parcels) into this proposed District. This effectively disenfranchises almost all of the affected landowners, despite the fact that the infrastructure costs would be levied upon all of us within the district. The costs for the supplemental water required to continually replenish groundwater that is exported via “exchanges” will also be levied upon the people within the district. The liability, including CEQA compliance and any environmental damage and resulting lawsuits caused by the export projects, will be the responsibility of the district. In sum, the landowners and residents will be paying for a few to take their water and sell it for profit, while solely bearing the

burden of the liability and costs for operation. It is the epitome of the privatization of profit and the socialization of risk.

When Mr. Pearson's letter, "Setting the Record Straight," was published on CalCoastNews.com, one online commenter astutely queried: "Why would a water district based in Perris, Ca. – half a day's drive away – care what an opinion article states on the Central Coast?" A disturbingly similar question was posed by the assistant general manager of the San Diego County Water Authority, regarding the secret PR campaign waged by EMWD down there: "Why is a Riverside County water agency spending tens of thousands of its ratepayer dollars to develop and implement a PR campaign in San Diego County designed to undermine another water agency in its own community?" In the San Diego County dispute, public records released by EMWD showed that it had been helping plan the formation of an "MWD team" in San Diego County, and, based on the above connections, it appears the same thing is now happening here.

In short, I and many others believe that the activities of EMWD and MWD have followed a pattern over the years, and that pattern, when combined with the recent actions of your Board members and attorneys in this region, clearly points in the direction of gaining control of the PRGWB without the knowledge or consent of the local residents.

Speaking of patterns, it is downright eerie to compare the similarities of the current events regarding the PRGWB with the history of the Owens Valley. One hundred years ago William Mulholland, the Los Angeles superintendent of water, took note of the quality, quantity, and proximity of Owens Valley water. Well aware that more water was necessary for Los Angeles' growth, Mulholland and others garnered political and economic support for a Los Angeles water project by implying in speeches, interviews, and articles that Los Angeles teetered on the brink of a water crisis. Affected landowners were not accurately informed of the consequences.

In 1913, the first aqueduct was completed. By 1924, Owens Lake and approximately fifty miles of the Owens River were dry. Today, both the Owens Valley residents and the ratepayers of LADWP are paying the price for this water grab that occurred a century ago—what was once a fertile valley is now little more than a dust bowl, and LADWP has been ordered to spend over \$1.6 billion to remediate the significant environmental effects of taking all the water out of Owens Lake, a cost which is passed on to their ratepayers.

Even though "water transactions", which would include exporting, banking, exchanging, conjunctively using and/or transfers, are more sophisticated and harder to understand these days than they were in Mulholland's day (frankly, at least Mulholland's water grab was transparent), the outcome of their application in the PRGWB almost certainly will be the same as in Owens Valley. If we are not careful with what happens to our groundwater today, our future farmers and residents may be paying the price for generations to come.

I am going to close by asking your Board to do the following, in order to avoid the continued appearance of undue influence or impropriety with regard to the PRGWB: (1) EMWD should instruct any of its Board members, staff members, attorneys or consultants to provide full and public disclosure of their representation of or affiliation with EMWD to any Paso Robles-area clients or potential clients, including obtaining informed, written consent of any potential conflicts (such as required under California Rule of Professional Conduct 3-310) if they have not already done so; and (2) EMWD should publicly and accurately disclose its interests, if any, in the PRGWB, including the expense of any ratepayer funds to date; and (3) As a member agency of MWD, request that MWD do the same.

Thank you for your attention to these important issues.

Sincerely,



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