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MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

Home of the Last Chance Mercañtile

December 2, 2009

Via Email (benjamin.feldman@asm.ca.gov) and Regular Mail

The Honorable Bill Monning
27th District, State Assembly
PO Box 942849
Sacramento, CA 94249-0027

Attn: Benjamin Feldman

Re: Request for Legislation - Ordinances

Dear Assemblyman Monning:

The Monterey Regional Waste Management District (hereafter, "MRWMD") is requesting that your office assist us by carrying legislation that would enable MRWMD to pass and adopt ordinances necessary to construct the infrastructure to carry out effective and efficient programs to further essential community services and to achieve the goals of state mandates for facilities to serve MRWMD residents and customers.

The MRWMD is a special district, established in 1951 and empowered pursuant to California Public Resources Code Section 49100 et seq., the Garbage and Refuse Disposal District ("GRDD") law. Among listed powers (see Section 49130) is the power to make and enforce rules and regulations for MRWMD administration and for operation and maintenance of the waste disposal site. While Section 49130(e) does empower the MRWMD to "[p]erform all acts necessary or proper to accomplish the purposes of this chapter," nowhere in GRDD law is there any mention of the power to adopt ordinances.

The primary purpose of the MRWMD is to manage, recycle, and dispose of solid wastes generated within its service area boundaries -- 853 square miles with a 170,000 population. The area includes unincorporated parts of western Monterey County, extending from Moss Landing to Big Sur, and includes as well the cities of Carmel-by-the-Sea, Del Rey Oaks, Marina, Monterey, Pacific Grove, Sand City, and Seaside.

In 1994 the joint powers arm of MRWMD (the Monterey Regional Waste Management Authority) issued revenue bonds to fund building and equipment to achieve AB939 recycling mandates, and to comply with state imposed revenue stream management requirements. Member agencies are required by agreement to direct their franchised waste to MRWMD facilities. However, non-franchised wastes, particularly construction and demolition ("C&D") materials that MRWMD facilities are constructed to process, are not included in member agency franchise agreements. From 2003 to present, local demolition companies have frequently hauled C&D materials to other disposal sites and processing facilities in the region. Consequently, the MRWMD has been deprived of anticipated and needed revenue that would support waste processing infrastructure. The MRWMD has concluded that it desperately needs the power to adopt ordinances to require flow controls necessary to enable it to achieve state mandates for diversion and to comply with other rules and regulations of the state.

Also, other legislation (AB479, Chesbro) now finding its way through the Legislature, could very likely result in requiring regional agencies such as MRWMD to adopt "commercial recycling ordinances" in an effort to meet increasingly higher diversion goals of the state.

Whether through an oversight or the result of a determination that it is an unnecessary power (we assume the former), MRWMD's foundational legislation does not include a specific grant of power to pass and adopt ordinances. This is at odds with other special district legislation, including several statutory schemes governing special districts that have stated purposes and mandates similar to or the same as MRWMD.

For example, the California Sanitary District Act, California Health and Safety Code Section 4700 et seq., provides at Section 4766 that districts formed under its authority *may adopt ordinances* for the purposes of exercising and effecting any of its powers, or for the purposes for which it was formed.

Likewise, the Sanitary District Law of 1923, California Health and Safety Code Section 6400 et seq., provides at Section 6491.3 that *ordinances may be enacted* in the same manner as district general regulations and shall have the same force and effect as such regulations. Further, it is instructive that at subsection (a) of Section 6512, this Law lists among allowed powers the operation of garbage dumpsites and garbage collection and disposal systems. MRWMD operates a sanitary landfill ("dumpsite"), collects solid waste delivered to it, and disposes and recycles as appropriate. MRWMD's need to have the power to adopt ordinances to regulate, implement, and enforce that power is no less than the need of those organized under the Sanitary District Law of 1923 to do precisely the same.

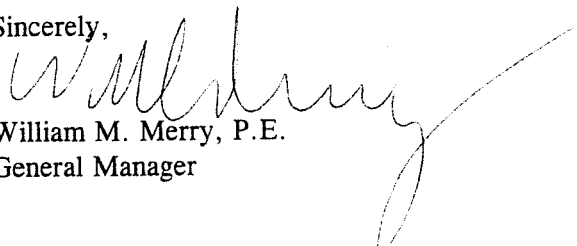
The Community Service District ("CSD") law, California Government Code Section 6100 et seq., provides at Section 61060 that among the general powers of a CSD is the *power to adopt ordinances* per Government Code Section 25120 and following. CSDs similarly are given the ability (Section 61100(c)) to collect, transfer, and dispose of solid waste. Again, MRWMD, doing just that, should have the power to adopt ordinances to further its mission and fulfill state and other mandates.

MRWMD is respectfully requesting, at an appropriate place in GRDD, probably Section 49130 as a new subsection, new empowerment language, substantially as follows: **"Adopt ordinances for the purpose of exercise and effect of any of its powers, or for the purposes for which it was formed."**

We suggest that the provisions of Government Code Sections 25120 through 25132 provide a sound procedure for ordinance adoption and could be referenced in enabling legislation as well. Or, the provisions of those sections could be adapted and added as part of such legislation. As mandates and obligations imposed on the MRWMD become more numerous, onerous, and complicated, our capability to meet those mandates and obligations without ordinance power is problematic. We need the force of law that ordinance power provides - the ability to put regulations in place coupled with the ability to enforce their terms.

We look forward to hearing from you regarding our request. You may contact me at 831-384-5313 or at wmerry@mrwmd.org.

Sincerely,


William M. Merry, P.E.
General Manager

cc: Board of Directors
Rob Wellington, Esq.