

Durst rebuttal to discussions at the CMWC Board Meeting regarding the sale of Silverleaf Reservoir

See Durstwatercompany.org for frequently asked questions for back up and documentation to below.

Why should the CMWC Board authorize the sale of Silverleaf?

- 1.) CMWC supplies culinary water only. It doesn't need Silverleaf to operate, yet it is forced to administer and maintain Silverleaf.
- 2.) Legally MGSWC is a separate entity and should have no bearing on CMWC decisions.
- 3.) As dictated in the Water Storage Agreement between CMWC and MGSWC Durst needs a court action to access their water. Durst intends to start this action next week. By selling Silverleaf, CMWC will get out of this legal fight and avoid the legal expenses.
- 4.) **By Selling Silverleaf, the CMWC Board is doing their duty to avoid unnecessary legal and administrative hassles and expenses.**

Why sell Silverleaf to Durst?

- 1.) Durst has pledged not to harm the users of MGSWC to the extent that our water rights are not infringed. This can be written into a sales contract.
- 2.) Durst has pledged to honor the existing lease terms through 2024. Nothing will change next year in respect to MGSWC use of their current 150 Acre feet stored in Silverleaf. This can be written into the sales contract.
- 3.) Durst has pledged to use Durst assets to defend CMWC against a challenge to this sale for the benefit of CMWC.
- 4.) The water in Silverleaf is subject to the Water Deliver Agreement between Durst and MGSWC. If Durst owns the land for the reservoir, it doesn't necessarily mean Durst would own all the storage. The water delivery agreement needs to be updated but the fundamentals are sound. Durst envisions a back lease to MGSWC to include a maintenance share agreement for their portion of the stored water.
- 5.) The owners of Durst only expect to develop 60 lots or so in the next couple of years. Durst plans to install 7 Acre feet of storage next year. Along with our flow rights which we are currently using, the existing storage should be adequate to service these lots along with the existing MGSWC served lots. We will only need 30 to 50 AF of storage out of Silverleaf though 2026.
- 6.) Beginning in spring 2024 Durst will meter all their water used from Cottonwood Creek through the pipeline delivery system. Durst will publish these findings. Even if MGSWC refuses

to disclose their meter reading we can develop a model for the entire community based on our meter readings.

7.) Durst is commissioning BT Engineering to prepare a Capital Facility Plan for our proposed 10 year build out. This will be posted on our website when it is finalized.

8.) Durst has pledged full transparency to the community. We will publish all studies, bulk meter readings and engineering. This can be written into the sales contract.

9.) Durst is already planning on building new and independent storage facilities at Durst expense.

10.) If Durst owns Silverleaf we would like to expand and improve the safety of the reservoir. Durst would finance and claim all new capacity. If we can get Gardner Cottonwood Creek (GCC) and The Master HOA to agree we can likely get a grant or low interest loan to expand and improve the safety of Silverleaf for the entire Cottonwoods. The Master HOA and GCC own the land surrounding Silverleaf.

11.) Durst has learned that CMWC, through their sole manager, has over-allocated storage that they don't own or control. CMWC is serving properties out of a tank co owned by Rulon Gardner but there is no agreement to use this tank. This is in violation of several water management principles if not the law. Durst members own some of this middle zone storage and can immediately remedy the situation by transferring this storage to CMWC.

12.) Durst owns most of the water stored in Silverleaf and currently due to circular legal agreements drafted by MGSWC and signed by CMWC we cannot access our own water. This is not right.

13.) Durst has a plan to improve the water situation for all members of CMWC and MGSWC.

14.) See the Durst offer.

15.) By selling Silverleaf to Durst the CMWC board is doing their duty for their members and protecting the users of MGSWC.

Why shouldn't CMWC sell to MGSWC?

1.) MGSWC basically is Gardner Development, the board is purely advisory at best (a "puppet board" due to the B and C shares that Rulon Gardner controls. Skyler Gardner and Mr. Mellot (business partners with GCC) are also on the board.

2.) If MGSWC owns Silverleaf and if they expand it, they will own all the new capacity. Intuitively if MGSWC operated with the existing storage in 2022 they don't need more storage. The only reason they would need more storage is for speculation or to keep Northside Creek full as a private play area.

3.) If MCCWDG pays the ~\$255,000 to purchase Silverleaf is there any guarantee that they won't just turn around and bill their shareholders?

4.) MGSWC is secretive. They don't share meter readings; they have not published their Capital Plan or studies. Their prior offers required secrecy.

5.) MGSWC is not truthful.

a. MGSWC has not followed the notification and transparency required by the water delivery agreement for changes to the pipeline delivery system. Durst is still waiting for the engineering and calculation on the diversion dam changes before we pay for a share of these. Our current view is that the old dam was working fine if not better than the new.

- b. MGSWC has not followed the water delivery agreement and has not paid Durst for water likely used in previous irrigation seasons. MGSWC has not provided the required meter readings so we don't know how much of our water they used.
 - c. MGSWC has altered state communications, likely to get Durst to install meters on the agricultural water which is not required.
- 6.) If Gardner Development owned the remaining phases and the land for water storage, would all this magically disappear? Let's be real.
 - 7.) Gardner Development and their partners own very little remaining highly developable land in the Cottonwoods; their only incentive at this point is to control the water and therefore future development.
 - 8.) The Developer Credit system as it stands now for both CMWC and MGSWC is a sham. So far, the Developer (AKA) Gardner Development builds or improves the systems and either they develop the land, or they gouge whoever wants to build on their own land to hook up to the water system. The latest documented markup for water capacity sold is over 500%.
 - 9.) There is no upper end to how much the developer can sell their development credits for. This is not a fair market. Both water companies appear to be nonprofit, but they are in fact a front and do the paperwork for Gardner Development's de facto monopoly.
 - 10.) Nobody has been successful in building on either system due to passive and active resistance. Durst and MCCWDC have made at least 3 documented attempts. This is also holding up Lee's market and other natural extensions to the CMWC system.
 - 12.) MGSWC has no incentive to improve the infrastructure to accommodate the remaining phases. It takes years to plan and execute these types of projects. All MGSWC must do is "nothing" and they are effectively controlling the remaining phases.

General

- 1.) Incorporation of Mountain Green is many years away. There is currently not a lot of support to undertake this effort.
- 2.) A special service district also sounds good. Who will champion its creation, how long would it take? This is just another boondoggle discussion to delay things for Durst.
- 3.) Durst has offered to merge with CMWC and or MGSWC if they can be treated fairly.
- 4.) Durst hereby pledges to support any or all the above provided we are treated fairly, and it does not delay our access to our water. Any effort along these lines needs to be done in parallel with Durst plans for self-determination.**