

EXHIBIT 14-C**LAW OFFICES OF
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July 8, 2005

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JUL 8 2005

David Berger, General Manager
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942**MPWMD**Re: MPWMD Proposed Ordinance 121 expanding water credit program for
selected land use projects and proposed Negative Declaration

Dear Mr. Berger:

On behalf of clients Patricia Bernardi, Save Our Carmel River, and The Open Monterey Project, we offer these comments on the proposed Ordinance 121 and the negative declaration, collectively referred to as "the documents." The ordinance causes serious concerns that the Water District is inappropriately meddling in land use issues. The negative declaration does not comply with the mandates of the California Environmental Quality Act. Several specific problems are described below.

Ordinance 121 gives special treatment to a specific kind of land use
and to a specific type of owner.

With this ordinance, the Water District proposes to step outside of its mandates to do special favors for a selected land use. The Water District's job is not land use. The Water District's role is to manage the water supply. The proposed finding #5, that the ordinance is intended "to facilitate Redevelopment Project planning and implementation," does not meet or respond to any of the Water District's statutory mandates.

The Water District is on a slippery slope when it gets involved directly in land use issues, especially when it gives special favors to particular types of land use or owners of land and does not extend those favors to other uses and owners. Why not create a new rule for offices? Or for land in unincorporated areas, or for commercial uses that sell goods at below-market prices? Once the District starts making different rules for different users or uses, the District loses credibility and starts to serve as a land use agency.

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The documents omit any intelligent discussion of the unusual water supply situation on the Monterey Peninsula, the cumulative impacts, or the growth-inducing impacts of this ordinance.

The documents fail to acknowledge that water is the controlling factor in Peninsula development now. The documents fail to identify why public development deserves different treatment from private development.

The documents fail to provide legally sufficient description of the environment under CEQA. The documents omit any mention of the environmental damage addressed in State Board Order 95-10, the overpumping of the Carmel River, the overdrafting of the Seaside Basin, or the SWRCB requirement that any new water go first to the overdrafting of the Carmel River. By extending the life of on-site water credits, the Water District is essentially creating "new water" that would not have otherwise existed at the end of the existing ten-year period.

There is a fair argument that Ordinance 121's expansion of the water credit program would cause an overall increase in water consumption.

The documents fail to quantify of amount of water that might be extended in this way. The Water District apparently has made no effort to identify the amount of existing on-site credits that would qualify for this extension, or to make a reasonable estimate of potential credits that may qualify for this extension in the future. The total on-site water credit for redevelopment sites has not been quantified by the Water District. Without a reasonable effort at quantifying the on-site water credits that may be extended for an additional ten years, the cumulative impacts analysis is fundamentally flawed.

Redevelopment sites are likely to involve significant amounts of water. For example, the 866-890 Broadway Avenue site in Seaside had on-site credit exceeding 2.1 acre feet. On December 13, 2004, the Water District Board reviewed that site in a credit transfer application. 2.1 acre feet is sufficient for 8 to 9 households, using the Peninsula average of 0.22 - 0.25 acre feet. The Broadway Avenue site is just one of many redevelopment sites in jurisdictions on the Peninsula.

The water credit program was created before Order 95-10, before the Seaside basin overpumping, and before the severe water shortage now faced by the Monterey Peninsula. There is no evidence of the environmental impacts caused by the on-site water credit program. The evidence is that the water credit transfer program causes an overall increase in water consumption.

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The Water District has no evidence that the proposed ordinance would not cause an overall increase in water consumption. To the contrary, because the proposed ordinance would extend the lifespan of some credits by ten years, the overall water consumption is bound to be higher than if the credits were allowed to expire. The proposed ordinance would expand the water credit program in the face of the overtaxed Peninsula water resources.

Further, the documents fail to identify and discuss the fact that on-site credits were designed to expire in ten years. The documents fail to identify and discuss the environmental impacts of doubling the lifetime of the credits to twenty years.

Further, the documents do not identify or discuss the Water District's failure to implement its on-site credit rules fairly and consistently, and how that might affect the ordinance's environmental impacts. For example, the Water District granted an on-site credit to the 866-890 Broadway Avenue redevelopment site in Seaside many years after the use was demolished, which was not consistent with the Water District's rules, and in granting the credit relied entirely on documentation received from the applicant. That matter is currently in litigation.

Ordinance 121 is a blatant attempt to avoid the MPWMD rule
that requires proof of water supply impact.

The documents fail to identify the real reason behind the jurisdictions' desire to avoid transfers: the MPWMD rule that requires proof that the transfer will not have a harmful effect on water supply. The jurisdictions wish to avoid this water supply accountability. Through the proposed ordinance, the Water District is cooperating to enable that avoidance of environmental accountability. That is this motivation that prompts this ordinance.

The proposed finding claims that the transfer process is "cumbersome" and "affords no practical advantage." Those claims are merely attempts to hide the true intent. There is no evidence that the transfer process is "cumbersome." Further, the transfer process affords a true practical advantage by allowing public review and accountability. This advantage would be lost by the proposed ordinance. The proposed ordinance would also eliminate the 15% "conservation savings" that the Water District claims to set aside during a transfer. The documents fail to address these important environmental issues.

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The references to "Redevelopment Project" and
water use "on" or "associated with" a Project site
are overly broad and ambiguous.

The ordinance would apply to water use credit "on a Redevelopment Project" site (see proposed Rule 25.5.A.4 and the proposed new definition). That definition is ambiguous. Would it mean *any site* within a designated Redevelopment Area? Would it mean an identifiable redevelopment project itself? The finding uses different language, calling it water credit "associated with a Redevelopment Project Site." What is the difference between the District's use of "on" and "associated with" a project site?

The ordinance's reference to Health and Safety Code section 33010¹ ("Redevelopment project") is not helpful and demonstrates a misunderstanding of California's Community Development Law.

Ordinance 121 would not require that the credit be used
on a Redevelopment Project site.

The ordinance would allow on-site credit to exist for 20 years. At that point, the credit could be transferred to the jurisdiction for an unlimited life span. The ordinance would not require that the credit ever be used on the originating Redevelopment Project site. Further, the ordinance would not require that the Redevelopment Site be the originating site.

The negative declaration does not comply with CEQA
and should not be approved.

My client urges you to consider the serious nature of your proposed action, and the lack of compliance with CEQA. The negative declaration is inadequate. An Environmental Impact Report is required before the Water District expands the water credit program, which is what this ordinance proposes.

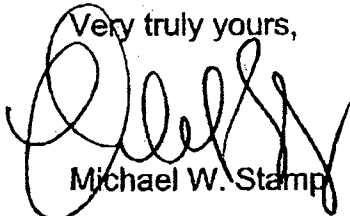
These comments incorporate by reference the entire SWRCB Order 95-10 and Decision 1632, and the recent studies of the Seaside basin showing the significant overpumping of that resource, which I believe that the Water District has in its files. If you do not have those in your files and would like me to provide them to you, please let me know and I will promptly do so.

¹Section 33010 reads in its entirety as follows: " 'Redevelopment project' means any undertaking of an agency pursuant to this part.' "

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Thank you for the opportunity to comment. Please put my office on the distribution list for notices relating to all hearings and all actions on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael W. Stamp". The signature is stylized and cursive, with a large initial "M" and "S".

Michael W. Stamp