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TO: Chair Pendergrass, Board Members, & General Manager

FROM: David C. Laredo, General Counsel

RE: CEQA Analysis for Concept Draft Sub-potable Water Use Credits Ordinance

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You have requested a brief memo responding to CEQA comments made by Michael Stamp regarding the concept draft Sub-potable Water Use Credits Ordinance (this ordinance was formerly denominated MPWMD Ordinance No. 130). Mr. Stamp raises several concerns, but it is our assessment that these are each referenced in the Initial Study and do not necessitate changes to the CEQA document or the concept ordinance.

Section 2 of Article X of the California Constitution, Water Code Section 13550, District Regulation XIII, and District Rules 131 and 132 each find the use of potable water for irrigation purposes to be water waste under certain circumstances and require the use of sub-potable water instead. Irrigation use of Recycled water could be required by law upon a determination that it is of adequate quality, is not detrimental to public health, and, most importantly, is of reasonable cost "comparable to, or less than, the cost of supplying potable domestic water."

The District's CEQA documentation identifies impacts including growth inducement by making water available, by requiring construction or expansion of wastewater treatment facilities, and loss of existing recreational facilities and the potential for replacement facilities.

The District's documentation discusses reduced water savings from 100% (if all potable irrigation water were replaced with sub-potable water) in light of SWRCB Order 95-10 and its one-for-one reduction requirement. The documentation also discusses how the concept ordinance would make landscaping available for credit where none now exists. In short, all of the concerns raised by Mr. Stamp are identified and addressed.

The real issue presented by Mr. Stamp is a policy decision for the Board: whether they are eliminating a replacement opportunity to comply with Order 95-10 by allowing development from a source which does not now exist. Without creating these credits, there would be no "reinvestment" of 75% of the current potable irrigation water into construction and there would be no lost opportunity to curtail this irrigation use during Stages 6 and 7 of MPWMD's rationing regimen.

Another policy consideration is whether the Board should focus on securing grant funding to offset the cost differential to make sub-potable water available and use its authority under Rules 131 and 132 to require substitution of potable irrigation water with sub-potable water.

Chair Pendergrass, Board Members, & General Manager  
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None of the comments by Michael Stamp regarding the concept draft Sub-potable Water Use Credits Ordinance reveal a deficiency in the manner in which this legislation has been considered under CEQA. Continued diligence should be exercised, however, as the concept is refined to ensure that changes to the proposal do not necessitate revision to the Initial Study, or compel an alternate CEQA document.

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