

EXHIBIT 10.A.-F

DATE: September 5, 2007
TO: Watermaster Board
FROM: Dewey Evans
SUBJECT: MPWMD Proposed Ordinance 130 Concerning Substitution of Recycled Water

RECOMMENDATION

The Seaside Watermaster should collaborate and work constructively with the MPWMD to ensure that any future MPWMD recycled water use ordinance is consistent with the Seaside Basin Judgment and provides appropriate incentive to maximize the use of recycled water use within the Monterey Peninsula.

DISCUSSION

Staff of the Monterey Peninsula Water Management District ("MPWMD") previously proposed Ordinance 130, which provided that use of recycled water as a substitute for irrigation with potable water will establish "credits" under MPWMD's water distribution permitting program. To establish a credit, the landowner would have to permanently replace *all* potable water irrigation with recycled water. The credit would be non-transferable and would allow reuse of up to 75 percent of the potable water reduction on the site where the substitution occurs. A copy of the formerly proposed Ordinance 130 and MPWMD's staff report regarding the ordinance are attached hereto.

Based upon feedback received from the MPWMD TAC committee and certain jurisdictions, MPWMD staff pulled Ordinance 130 from consideration.¹ David Laredo, counsel for the MPWMD, has informed us that MPWMD staff intends to agendize a discussion of concepts regarding recycled water use substitution at the MPWMD's September 17, 2007 Board meeting following a presentation by Keith Israel on the MRWPCA/MCWD Urban Water Augmentation Project. However, no ordinance on the issue of recycled water substitution will be considered at that time. Mr. Laredo also stated that the matter of reforming and developing a new recycled water substitution ordinance will likely be directed to the MPWMD TAC and the MPWMD Water Demand Committee.

Key substantive issues arising from the formerly proposed Ordinance 130 and applicable to a potential future ordinance are discussed below.

A. Non-Application of Recycled Water Use Ordinance to Substitution of Recycled Water for Seaside Basin Groundwater Production. Mr. Laredo has stated that the intention of the former Ordinance 130 was not to regulate substitution of recycled water use for groundwater production from the Seaside Groundwater Basin, but instead is directed at recycled water substitution by customers of California American. He anticipates that the same intention will be brought forward to any new MPWMD ordinance on this subject, and that the MPWMD staff and legal counsel will work with Seaside Basin stakeholders to achieve language within any new ordinance that clarifies this important point.

¹ Note a entirely different Ordinance 130, which does not concern recycled water substitution, will be considered at the MPWMD's September 17, 2007 Board meeting.

The issue is important because the Seaside Basin Judgment already addresses the matter of recycled water substitution as an element of the comprehensive and integrated "physical solution" for the Seaside Basin. The Judgment allows for: (a) an entity to fund recycled water use and obtain the user's former potable allocation under the Judgment (Judgment, p. 20), and (b) to transfer pumping allocations created by substitution of recycled water for other users within the Basin (Judgment, p. 42). The Judgment also sets forth a scheme to ensure the protection of the Seaside Basin, including reductions of the Basin's Operating Yield every three years until the Basin comes into a balanced water budget or new water supplies are imported in sufficient quantity to offset the triennial reductions. The Judgment's provisions for credits for substituting recycled water, transferring pumping allocation, and the triennial reductions in Operating Yield ensure that the community's water supply needs are met while maintaining the long-term sustainability of the resource. Because the Judgment already applies a carefully balanced set of provisions on this matter, it is neither appropriate or necessary for a MPWMD recycled water use ordinance to apply to substitution of recycled water for use of Basin groundwater under the Seaside Basin Judgment. Thus, Seaside Basin stakeholders should work with MPWMD staff and Mr. Laredo to agree upon appropriate language to ensure that no conflict exists between the language of any future MPWMD ordinance and the operation of the Judgment on this matter.

B. Ensuring Appropriate Incentive to Foster Recycled Water Use. The Seaside Basin Watermaster maintains a strong interest in ensuring that recycled water use is maximized to the extent reasonably feasible not only within the Seaside Basin, but also throughout the California American system and within the broader Monterey Peninsula. Watermaster's interest stems, in part, from the integrated relationship between the groundwater supply from the Basin, the Carmel River, and other water supply sources for the community. There are several matters arising from the former Ordinance 130 that deserve attention and further discussion among the stakeholders.

Initially, it should be acknowledged that recycled water from the Urban Water Augmentation Project is anticipated to cost in excess of \$2,000 per acre-foot for use within the Monterey Peninsula. Thus, there must be substantial incentives for a landowner to purchase or use recycled water in lieu of much cheaper potable water, or for another party to purchase and substitute the recycled water on the landowner's behalf. Without such strong incentives, the recycled water substitution will likely not occur. Three aspects of the former Ordinance 130 should be carefully addressed in relation to their effect upon this incentive: (1) ability/inability to transfer credits achieved from recycled water substitution; (2) *all* versus *partial* recycled water substitution; and (3) the quantity of reduction, if any, in the credits achieved versus the quantity of former potable water use. As noted above, the former Ordinance 130 did not allow transfers of credits (i.e., credits would have to be used on-site), partial substitution of recycled water for potable water irrigation would not result in any credits, and realized credits would only be 75% of the former potable water use. Each of these items should be reconsidered to reach a result that is workable while providing appropriate incentives for substitution of recycled water.

Inability to transfer recycled water substitution credits would effectively eliminate the incentive to pay the vast increase in the recycled water costs, and thus substitution will likely not occur except for the rare circumstances in which there is an on-site demand for additional potable water use. Further, the inability to accrue credits for partial use of recycled water will also create a dis-incentive to substitute recycled water in many circumstances where it is not practical to substitute recycled water for all of a landowner's former potable water use. For example, it is common that turf must be "flushed" with potable water to eliminate salt build-up in the root zone. Lastly, the use of recycled water in lieu of potable water is a major means of expanding the beneficial use of the Monterey Peninsula's potable water supply. Thus, in light of the effect on incentives to use recycled water, it does not seem prudent to reduce the credits accrued from recycled water to only 75% of the former potable water use. We must acknowledge the water use accounting issues that must be addressed to ensure that potable water use

pursuant to established credits do not exceed the former potable water use. However, these issues can likely be addressed by other means.

For the foregoing reasons, Watermaster staff encourages the Watermaster Board to direct staff to engage in future discussions with MPWMD staff and legal counsel to develop an effective and appropriate recycled water substitution ordinance that Watermaster can mutually endorse.