

**COMMENT LETTERS RECEIVED ON
MONTEREY BAY SHORES ECORESORT PROJECT**

Received after production and distribution of the February 26, 2009 meeting packet

| DATE | NAME | COMMENT |
|-------------|--|--|
| 2/26/09 | Craig E. Anthony CAW | Letter requesting changes to the Conditions of Approval presented under Item 15 from the February 26, 2009 MPWMD Board meeting agenda |
| 2/26/09 | Sheri L. Damon Lombardo & Gilles, LLP | Letter responding to letter submitted by Sierra Club dated February 24, 2009 |
| 2/26/09 | Sierra Club | Presentation from Sierra Club stating its position on the MBSE project |
| 2/26/09 | Lillian Clements | Letter requesting the MPWMD Board defer its decision to amend the CAW service area to provide service to the MBSE |
| 2/26/09 | Charlie Henrikson | Letter requesting the MPWMD Board defer its decision to amend the CAW service area to provide service to the MBSE |
| 2/25/09 | Maura Mecchella | Letter requesting the MPWMD Board defer its decision to amend the CAW service area to provide service to the MBSE |
| 2/25/09 | Kacee Fujinami | Letter requesting the MPWMD Board defer its decision to amend the CAW service area to provide service to the MBSE |
| 2/25/09 | Heather Marquard | Letter requesting the MPWMD Board defer its decision to amend the CAW service area to provide service to the MBSE |
| 2/25/09 | Trisha DiPaola | Letter requesting the MPWMD Board defer its decision to amend the CAW service area to provide service to the MBSE |
| 2/25/09 | Mary Rice | Letter requesting the MPWMD Board defer its decision to amend the CAW service area to provide service to the MBSE |
| 2/25/09 | Fritz Gaudette | Letter requesting the MPWMD Board defer its decision to amend the CAW service area to provide service to the MBSE |
| 2/25/09 | Ralph Rubio City of Seaside | Letter reaffirming the City's support for MBSE and stating concerns with the proposed Conditions of Approval presented under Item 15 from the February 26, 2009 MPWMD Board meeting agenda |
| 2/24/09 | Chris Fitz LandWatch | Letter stating the addendum prepared by the City of Sand City is an inappropriate and inadequate environmental document and there are additional issues requiring environmental review |
| 2/24/09 | Laurens Silver Environmental Law Project | Letter stating opposition to the MBSE project |

| | | |
|---------|--|---|
| 2/24/09 | Janet Lewis | Letter requesting the MPWMD Board defer its decision to amend the CAW service area to provide service to the MBSE |
| 2/24/09 | Paul Goss | Letter requesting the MPWMD Board defer its decision to amend the CAW service area to provide service to the MBSE |
| 2/23/09 | Sheri L. Damon Lombardo & Gilles, LLP | Letter requesting MPWMD add two documents prepared by the Seaside Water Master related to the Seaside Basin and seawater intrusion to the official MBSE record |
| 2/23/09 | Todd Norgaard Carmel Valley Association Water Committee | Letter stating concerns that the MBSE connection to the CAW system will put additional demands on the Carmel River watershed and aquifer |
| 2/17/09 | Sheri L. Damon Lombardo & Gilles, LLP | Letter to Ralph Rubio responding to Laurens H. Silver's letter dated February 5, 2009 to the Water Master and his follow up letter dated February 11, 2009 regarding the Water Master's review and approval of the MBSE project |

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CALIFORNIA
AMERICAN WATER

February 26, 2009

California American Water - Monterey
511 Forest Lodge Rd, Suite 100
Pacific Grove, CA 93950
amwater.com

Kristi Markey
Chair
Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, CA 93940

Re: Application to Amend California American Water Distribution System to Serve Monterey Bay Shores Ecoresort in Sand City; California American Water and Security National Guaranty, Co-Applicants; MPWMD Application #20080915MBS-L4; APN# 011-501-014

California American Water has reviewed the staff report provided for the February 26, 2009 MPWMD Board Meeting relating to providing water service to the Monterey Bay Shores Ecoresort [MBSE].

California American Water requests changes to the about the following permit conditions:

Condition No. 4: California American Water disagrees with the contentions of Mr. James Kassel in his letter dated February 5, 2009. Order 95-10 is silent on what parcels of land California American Water can serve from the Carmel River, and does not prohibit California American Water from serving new development, provided that the Company otherwise complies with the volume limits set by that Order. Moreover, to the extent that the MPWMD, as a party to the litigation challenging Order 95-10, is now attempting to impose new requirements not contained within that Order, such action may violate the settlement of the Order 95-10 litigation. Notwithstanding the foregoing, the last sentence of proposed Condition No. 4 is superfluous in light of the preceding sentence requires all water for the MBSE to be derived from the Seaside Groundwater Basin. Thus, the last sentence of this condition should be stricken.

Condition No. 5: All of the text after the first sentence are not phrased as conditions that California American Water can determine compliance. Those matters are either more appropriately made as findings or need to be re-phrased as conditions of approval.

Condition No. 8: This condition is ambiguous because the "Permitted System" cannot report water usage. This condition should be revised to clearly state between, the Property Owner and Permittee, the party responsible for complying with this condition.

Condition No. 9: This condition states that "Permittee" shall comply with the MPWMD Conservation Ordinances. No aspect of this action authorized additional water use by the Company to the extent that it consumes water. This conditions should be revised to clearly state between, the Property Owner and Permittee, the party responsible for complying with this condition.

Condition No. 11: This condition has the same ambiguity as Condition Nos. 8 and 9 and should be revised in the same manner.

Condition No. 13: This condition has the same ambiguity as Condition Nos. 8, 9 and 11 and should be revised in the same manner.

Condition No. 15: The text is not phrased as conditions that California American Water can determine compliance when operating under this permit. Those matters are either more appropriately made as findings or need to be re-phrased as conditions of approval.

Condition No. 16: The text is not phrased as conditions that California American Water can determine compliance when operating under this permit. Those matters are either more appropriately made as findings or need to be re-phrased as conditions of approval.

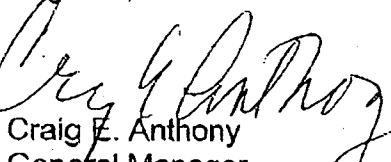
Condition No. 17: California American Water objects to this condition in that nothing in the MPWMD's rules or enabling legislation grants the District the authority to require production of documents. This condition should be stricken.

Condition No. 29: California American Water has no objection to this condition provided that compliance with this condition is satisfied by demonstrating that water produced from the Company's Seaside wells exceeds the volume of water delivered to the MBSE meter.

Condition No. 32: California American Water objects to Option #3 because it violates Constitutional principles relating to regulatory takings. Considering the other proposed conditions of approval for this item, there is no impact to the Carmel River from California American Water serving the Monterey Bay Shores Ecoresort's adjudicated groundwater rights from the Seaside Basin, so there is no nexus between the impacts of this permit amendment and the Carmel River to justify requiring California American Water to purchase additional groundwater supplies. Thus, this condition should be stricken from consideration.

Thank you for your consideration.

Regards,


Craig E. Anthony
General Manager
California American Water

Anthony L. Lombardo
Jeffery R. Gilles

Dennis C. Beougher
Patrick S.M. Casey
Sheri L. Damon
E. Soren Diaz
J. Kenneth Gorman
Koren R. McWilliams
Paul Rovella
Bradley W. Sullivan
James W. Sullivan
Kelly McCarthy Sutherland



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225 Sixth Street
Hollister, CA 95023
831-630-9444

Virginia A. Hines
Of Counsel

February 26, 2009

Amy Purchase Reid
Of Counsel

Kristina Anne Markey, Chair
Monterey Peninsula Water Management District
5 Harris Court, Bldg G
PO Box 85
Monterey, CA 93942

RE: Water Distribution System Permit (Cal Am and SNG)
Sierra Club letter dated 2/24/09

Dear Chair Markey and Members of the Board:

This letter is in response to the letter submitted by the Sierra Club on February 24, 2009.

The Sierra Club contends that the underlying documents are inadequate or incomplete or not final and that additional environmental review is required. This is incorrect. The letter relies on inaccuracies and outdated materials. Your staff has analyzed the need for further environmental review and concluded that no further environmental review is necessary.

The Sierra Club ignores the import of the Seaside Basin Adjudication in its evaluation of "changed circumstances". With exception of the removal of sand, all of the impacts are addressed by the adjudication decision. As I have previously pointed out the Seaside Adjudication presumptively establishes a threshold of significance for determining whether or not there will be an environmental impact in the Seaside Basin created by pumping adjudicated rights. This is because findings were made concerning the safe natural yield of the basin and operating yields of the basin and the current lack of seawater intrusion. Cal Am and Security National's request is within that threshold thus as a matter of law there can be no environmental impact to the Seaside basin. Likewise, the Amended Decision creates a Physical Solution which means the efficient and equitable management of Groundwater resources within the Seaside Basin in order to maximize the reasonable and beneficial uses related to those resources.¹ The requested water distribution system permit is consistent with that mandate.

With respect to the removal of sand, this is an impact which does not fall within the responsible agency's jurisdiction and the comments and statements contained in the

¹ Amended Decision, Page 14:16-20

Kristina Markey
Members of the District
2/26/2009
Page 2

Sierra Club letter are speculative and should be disregarded by the Board. It is without question that the removal of the sand within the coastal zone will be governed by Conditions which are established by the California Coastal Commission. We have previously commented on the legal infeasibility of the Sand City desalination plant as an alternative. To date no evidence as required by CEQA Guidelines Section 15096(g)(2) has been identified that these alternatives or mitigations are designed to address or that they would substantially lessen or avoid a *significant environmental impact*.

Second, on Page 5 of the Sierra Club letter, it is asserted that the Monterey Bay Eco-resort has not complied with previous mitigation as outlined in the 1998 EIR. That mitigation has been complied with because the Seaside Basin Adjudication Decision establishes a physical solution to basin management and production plan which governs the Seaside Basin. Likewise, it is the Watermaster, not the Water Management District which is responsible for the Seaside Basin management and monitoring.

The Sierra Club asserts that Sand City did not adopt the Addendum to the 1998 EIR. This is incorrect. Sand City did make findings and adopt the Addendum. Its resolution also noted the correct law which calls out that the City will take final action on the project and its attendant environmental review after the Coastal Commission has taken action on the project. At that time, the City will be required to again review and make findings based upon all the environmental review which will be before it which will include without limitation, the 1998 EIR, the Addendum, the Coastal Commission staff report and findings. The Sierra Club, confuses challenge of an environmental document with challenging a project. A CEQA document in and of itself is not challengeable in the absence of a project. Public Resources Code section 21167; *McAllister v. County of Monterey* (2007)147 Cal. App. 4th 253. A notice of determination is required only upon approval of a project. The City of Sand City did adopt the Addendum to the 1998 EIR, it previously approved a substantially larger project and it will revisit the project after the review by the Coastal Commission and will make "final" CEQA findings relative to the project at that time.

Likewise, Public Resources Code Section 21167.3 requires that a responsible agency shall assume that the environmental impact report does comply with the provisions of CEQA and shall issue a conditional approval even if the environmental impact report is challenged. Here, the environmental impact report is not challenged. The conditions of approval make clear that the Water Distribution Permit will not be effective until after the Coastal Development Permit is issued. As you are aware, the Coastal Commission process will entail subsequent environmental review and a full public vetting of the underlying Monterey Bay Shores Ecoresort project.

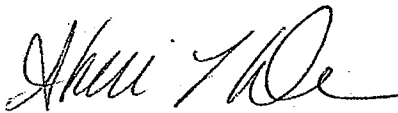
It should be noted that payment of rates is not an environmental impact and should be disregarded as a ground to require additional environmental review.

Kristina Markey
Members of the District
2/26/2009
Page 3

CEQA law requires the Water Management District to assume the validity of the environmental documents and the Seaside Adjudication establishes the thresholds for impacts to the Seaside Basin and limits the discretion of the MPWMD to act in any manner which would defeat the physical solution and process established by the Court.

We respectfully request that you approve the water distribution permit.

Sincerely,
Lombardo & Gilles

A handwritten signature in cursive script, appearing to read "Sheri L. Damon".

Sheri L. Damon

Sierra Club presentation for tonight to MPWMD 2.29.09

Thank you for the opportunity to present the Sierra Club position with respect to the Cal-Am/SNG application for a water distribution permit. Because the District, as a responsible agency under CEQA, has not performed any environmental analysis of this proposal and is instead relying on an inadequate Addendum prepared by SNG and not adopted by Sand City, we urge the Board to order the preparation of a supplemental EIR that addresses thoroughly the environmental consequences of granting this application. The inadequacies of the existing developer prepared documentation are set forth in a 15 page letter Sierra Club sent to the District a few days ago. I will not detail these tonight, as they are already in the record of this proceeding. However, Sierra Club's concerns can be summarized as follows:

1. There must be analysis of the environmental short term impacts of pumping up to an additional 90AFY in this overdrafted Basin;
2. There must be analysis of the impacts on other producers in the Basin that will be required as a result of pumping for the SNG project, on top of the foreseeable cutbacks on Cal Am production from the Carmel River resultant from any permanent cease and desist order issued by the State Board;
3. The potential water resource public trust impacts of the 420,000 cu. yds. of sand to be moved to undisclosed locations must be analyzed.

Additionally, I would like to point out that according to the annual report of the Watermaster for 2008, Cal Am and the City of Seaside amassed Replenishment Assessments of almost \$6,000,000 for production over the natural safe yield and for Operating Yield Over Production. (A Replenishment Assessment of \$2485 per acre foot was established by the Water Master Board for Water Year 2008 pumping. Cal Am's Replenishment Assessment for production over the natural safe yield is \$5,352,939 and its Replenishment Assessment for Operating Yield Over Production is \$34,045. The City of Seaside's Replenishment Assessment for its Municipal System for production over the natural safe yield is \$414,001 and its Replenishment Assessment for Operating Yield Over Production is \$16,898. The City of Seaside's Replenishment Assessment for its Golf Course for production over the natural safe yield is \$131,705 and its Replenishment Assessment for Operating Yield Over Production is \$131,705).

In the short term, at least, the public has no assurance that production in this over-drafted basin will be reduced to the limits imposed by the Court.

The overdraft will likely only be increased by Cal Am's additional production from the Peralta Well, since other producers will likely pay replenishment fees rather than reduce their pumping proportionately. In the final analysis then, the augmented pumping from the Peralta Well means less water in the Seaside Basin, with concomitant environmental effects due to more overdraft over the safe yield.

What I wish to address in greater detail tonight however is the complete failure of the unadopted Addendum to address the alternative water supplies for this Project. We have seen no analysis of the alternatives of supply through on site wells and delivery by a

mutual water company (as proposed in 1998 by SNG), nor has there been consideration of water produced by Sand City's desal plant as a source of supply for SNG. After appropriate analysis of the environmental impacts of these alternatives relative to the proposed delivery of water from the Peralta Well via the Cal Am distribution system, it may well appear that there are feasible alternatives, or feasible mitigation measures within MPWMD's powers, that would substantially lessen or avoid any significant impacts the project would have on the environment.

In this connection, we believe it would be appropriate for the District to consider in the context of an environmental document why Sand City desal water should not be available for this project. In its January 31, 2006 letter to Cal Am (already in this record) the State Board stated that Sand City's proposed project "will not be counted toward offsetting illegal diversions because it only temporarily reduces Carmel River diversions and is not a permanent solution." Sierra Club urges that consideration be given to Sand City desal water as a source of supply for SNG. Clearly, the District has authority to amend Ordinance 132 to authorize service from the desal plant to areas currently within Cal Am service boundaries within Sand City.

Consideration should also be given to the implications of allowing SNG to use its rights as an Alternative Producer under the Adjudication to use Cal Am as its water source through augmented pumping from the Peralta Well. Whether or not this is a matter of good public policy may be debatable. To the extent this sets a precedent if approved by the District, we see no reason why the other Alternative Producers (including the City of Seaside) may not elect to forego pumping on onsite wells and make similar arrangements with Cal Am. Since there are about 1400 AFY allocated to Alternative Producers under the Decree, this precedent could have significant effects on the Basin. We need consideration the impacts caused by these alternative modalities of delivery of water to major Alternative Producers under the Adjudication.

There has been little or no explanation as to why SNG is seeking water from the Cal Am system rather than exercising its overlying rights through pumping its own wells. There is no substantial evidence in this record as to whether or not there would be beneficial effects (from the perspective of abating salt water intrusion) from pumping from the Peralta Well rather than SNG's onsite wells.

We urge you to get the answers to these questions first, before taking action on this application. If after answering these questions, a water distribution permit is granted, we would urge the District to condition any such grant on SNG's dedication of the remainder of its allocation under the Adjudication to reducing diversions from the Carmel River (as currently proposed in an alternative draft condition).

Thank you again for your granting us this opportunity to speak.

*received via email
2/24/09*

Henrietta Stern

From: bebewonk@hotmail.com
Sent: Thursday, February 26, 2009 11:04 AM
To: Henrietta Stern
Subject: Defer Decision on Monterey Bay Shores Resort

Chair Kristi Markey

Dear Chair Markey,

I am writing to request that the MPWMD Board defer its decision to amend the Cal-Am service area to provide service to the Monterey Bay Shores Resort. Just like you, I too have concerns about the Monterey Bay Shores Resort and its impacts on our local environment. Given that there are new and existing circumstances that have not been appropriately analyzed by a Subsequent EIR, but instead have been inappropriately and inadequately addressed by an Addendum to the EIR, the MPWMD Board cannot make a decision at this point because the potentially significant impacts to the environment resulting from substantial changes in the circumstances under which the project is undertaken have not been appropriately analyzed.

Thank you for actions to ensure protection of our coast~

Sincerely,
Lillian Clements
284 Central A ve.
Pacific Grove, CA 93950

cc:
Henrietta Stern

*copy of emails also to Doyle
Lehman
Potter*

Henrietta Stern

From: puldwn@yahoo.com
Sent: Thursday, February 26, 2009 9:48 AM
To: Henrietta Stern
Subject: Defer Decision on Monterey Bay Shores Resort

Chair Kristi Markey

Dear Chair Markey,

I am writing to request that the MPWMD Board defer its decision to amend the Cal-Am service area to provide service to the Monterey Bay Shores Resort. Just like you, I too have concerns about the Monterey Bay Shores Resort and its impacts on our local environment. Given that there are new and existing circumstances that have not been appropriately analyzed by a Subsequent EIR, but instead have been inappropriately and inadequately addressed by an Addendum to the EIR, the MPWMD Board cannot make a decision at this point because the potentially significant impacts to the environment resulting from substantial changes in the circumstances under which the project is undertaken have not been appropriately analyzed.

Thank you for actions to ensure protection of our coast~

Sincerely,
charlie henrikson
1031 funston
pacific grove, CA 93950

cc:
Henrietta Stern

*copy of emails to Doyle
Lehman
Potter*

Henrietta Stern

From: maura_mecchella@yahoo.com
Sent: Wednesday, February 25, 2009 6:08 PM
To: Henrietta Stern
Subject: Defer Decision on Monterey Bay Shores Resort

Chair Kristi Markey

Dear Chair Markey,

I am writing to request that the MPWMD Board defer its decision to amend the Cal-Am service area to provide service to the Monterey Bay Shores Resort. Just like you, I too have concerns about the Monterey Bay Shores Resort and its impacts on our local environment. Given that there are new and existing circumstances that have not been appropriately analyzed by a Subsequent EIR, but instead have been inappropriately and inadequately addressed by an Addendum to the EIR, the MPWMD Board cannot make a decision at this point because the potentially significant impacts to the environment resulting from substantial changes in the circumstances under which the project is undertaken have not been appropriately analyzed.

Thank you for actions to ensure protection of our coast~

Sincerely,
Maura Mecchella
2914 Yorktown Court
Marina, CA 93933

cc:
Henrietta Stern

*copies to Doyle
Lehman
Potter*

Henrietta Stern

From: kittenfish@aol.com
Sent: Wednesday, February 25, 2009 7:15 PM
To: Henrietta Stern
Subject: Defer Decision on Monterey Bay Shores Resort

Chair Kristi Markey

Dear Chair Markey,

I am writing to request that the MPWMD Board defer its decision to amend the Cal-Am service area to provide service to the Monterey Bay Shores Resort. Just like you, I too have concerns about the Monterey Bay Shores Resort and its impacts on our local environment. Given that there are new and existing circumstances that have not been appropriately analyzed by a Subsequent EIR, but instead have been inappropriately and inadequately addressed by an Addendum to the EIR, the MPWMD Board cannot make a decision at this point because the potentially significant impacts to the environment resulting from substantial changes in the circumstances under which the project is undertaken have not been appropriately analyzed.

Thank you for actions to ensure protection of our coast~

Sincerely,
Kacee Fujinami
1153 Waring St. Apt. 1
Seaside, CA 93955

cc:
Henrietta Stern

*Copies to Doyle
Lehman
Potter*

Henrietta Stern

From: heatherm@pauldavispartnership.com
Sent: Wednesday, February 25, 2009 1:10 PM
To: Henrietta Stern
Subject: Defer Decision on Monterey Bay Shores Resort

Chair Kristi Markey

Dear Chair Markey,

I am writing to request that the MPWMD Board defer its decision to amend the Cal-Am service area to provide service to the Monterey Bay Shores Resort. Just like you, I too have concerns about the Monterey Bay Shores Resort and its impacts on our local environment. Given that there are new and existing circumstances that have not been appropriately analyzed by a Subsequent EIR, but instead have been inappropriately and inadequately addressed by an Addendum to the EIR, the MPWMD Board should not make a decision at this point. The potentially significant impacts to the environment resulting from changes in the circumstances under which the project is developed have not been appropriately analyzed.

Thank you for actions to ensure protection of our coast~

Sincerely,
Heather Marquard
1775 Ord Grove Ave
Seaside, CA 93955

cc:
Henrietta Stern

*email copies to Directors Doyle
Lehman
Potter*

Henrietta Stern

From: trisha_dipaola@csumb.edu
Sent: Wednesday, February 25, 2009 12:26 AM
To: Henrietta Stern
Subject: Defer Decision on Monterey Bay Shores Resort

Chair Kristi Markey

Dear Chair Markey,

I am writing to request that the MPWMD Board defer its decision to amend the Cal-Am service area to provide service to the Monterey Bay Shores Resort. Just like you, I too have concerns about the Monterey Bay Shores Resort and its impacts on our local environment. Given that there are new and existing circumstances that have not been appropriately analyzed by a Subsequent EIR, but instead have been inappropriately and inadequately addressed by an Addendum to the EIR, the MPWMD Board cannot make a decision at this point because the potentially significant impacts to the environment resulting from substantial changes in the circumstances under which the project is undertaken have not been appropriately analyzed.

Thank you for actions to ensure protection of our coast~

Sincerely,
Trisha DiPaola
353 Divarty Street
Seaside, CA 93955

cc:
Henrietta Stern

*emails also sent to Doyle
Lehman
Potter*

Henrietta Stern

From: mary@montereygrp.com
Sent: Wednesday, February 25, 2009 6:20 AM
To: Henrietta Stern
Subject: Defer Decision on Monterey Bay Shores Resort

Chair Kristi Markey

Dear Chair Markey,

I am writing to request that the MPWMD Board defer its decision to amend the Cal-Am service area to provide service to the Monterey Bay Shores Resort. Just like you, I too have concerns about the Monterey Bay Shores Resort and its impacts on our local environment. Given that there are new and existing circumstances that have not been appropriately analyzed by a Subsequent EIR, but instead have been inappropriately and inadequately addressed by an Addendum to the EIR, the MPWMD Board cannot make a decision at this point because the potentially significant impacts to the environment resulting from substantial changes in the circumstances under which the project is undertaken have not been appropriately analyzed.

Thank you for actions to ensure protection of our coast~

Sincerely,
Mary Rice
455 Canyon Del Rey #260
Monterey, CA 93955

cc:
Henrietta Stern

*emails also sent to Doyle
Lehman
Potter*

Henrietta Stern

From: whateverfg@comcast.net
Sent: Wednesday, February 25, 2009 8:13 AM
To: Henrietta Stern
Subject: Defer Decision on Monterey Bay Shores Resort

Chair Kristi Markey

Dear Chair Markey,

Attention: efforts have been made by cities on the bay to remove Ocean View Obstructions from the west side of Coastal roads let's not be in contradiction.
I am writing to request that the MPWMD Board defer its decision to amend the Cal-Am service area to provide service to the Monterey Bay Shores Resort. Just like you, I too have concerns about the Monterey Bay Shores Resort and its impacts on our local environment. Given that there are new and existing circumstances that have not been appropriately analyzed by a Subsequent EIR, but instead have been inappropriately and inadequately addressed by an Addendum to the EIR, the MPWMD Board cannot make a decision at this point because the potentially significant impacts to the environment resulting from substantial changes in the circumstances under which the project is undertaken have not been appropriately analyzed.

Thank you for actions to ensure protection of our coast~

Sincerely,
Fritz Gaudette
POB 1481
Monterey, CA 93942

cc:
Henrietta Stern

*emails also sent to Doyle
Lehman
Potter*



REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE

440 Harcourt Avenue
Seaside, CA 93955

Telephone (831) 899-6729
FAX (831) 899-6211

HAND DELIVERED

February 25, 2009

HAND
DELIVERED

RECEIVED

FEB 25 2009

MPWMD

Monterey Peninsula Water Management District
Board of Directors
Attn: Henrietta Stern, Project Manager
P.O. Box 85
Monterey, CA 93924-0085

RE: Monterey Bay Shores Ecoresort Water Distribution Permit, MPWMD Application #20080915MBS, APN 011-501-014, Public Hearing of February 26, 2009, Agenda Item #15

Dear Board Members:

The Redevelopment Agency of the City of Seaside (Agency) wishes to reaffirm the City's support for Monterey Peninsula Water Management Districts (District) issuing the Water Distribution Permit for the Monterey Bay Shores Ecoresort, as originally expressed in the City's letter of January 28, 2009.

However, the Agency has reviewed the proposed Conditions of Approval set forth in the staff report for the District's Public Hearing of February 26, 2009 (Agenda Item #15) and is concerned that as presently written, both proposed Options 1 and 2 of Condition #32 either exceed the jurisdiction of the District in the adjudicated Seaside Groundwater Basin (Basin) or could impede the redevelopment program of the Agency as it carries out its public trust responsibility to undertake projects that redevelop blighted areas within its jurisdiction, which includes most of the lands overlying the Basin. An example of such a project currently in active planning is the Agency's West Broadway Urban Village Redevelopment Project, a sustainable mixed-use transportation-oriented project.

Therefore, as you take action on this Water Distribution Permit, we ask that you modify the text of Option 1 of Condition #32, and adopt modified Option 1, as follows.

Option 1 (modified). The District urges SNG to work collaboratively with CAW and the Redevelopment Agency of the City of Seaside, an agency with public trust responsibility for redevelopment of land uses within the majority of the area overlying the adjudicated Seaside Groundwater Basin, to distribute the remaining 59 AFY (as may be amended by restrictions imposed by the Watermaster) of water from SNG's adjudicated water right in the Basin to the City of Seaside which would have a beneficial use for planned redevelopment projects of the Redevelopment Agency of the City of Seaside. This will have the effect of

Monterey Peninsula Water Management District
Board of Directors
February 25, 2009
Page 2

retaining the 59 AFY within the Seaside Water Basin. While this is voluntary, the District urges SNG, CAW, and the Redevelopment Agency to arrive at an agreement within 180 days after the Monterey Bay Shores Ecoresort has obtained its final Coastal Development Permit.

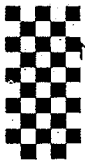
Sincerely,



Ralph Rubio
Board Chairman

RR:bc

c: City Council Members
Ray Corpuz, City Manager
Diana Ingersoll, Deputy City Manager-Resource Management
Ed Ghandour, Monterey Bay Shores



LandWatch

monterey county

Post Office Box 1876
Salinas, CA 93902-1876
Salinas Phone: 831-422-9390
Monterey Phone: 831-375-3752
Website: www.landwatch.org
Email: landwatch@mclw.org
Fax: 831-422-9391



February 24, 2009

MPWMD Board
P.O. Box 85
Monterey, California 93924

RECEIVED

FEB 25 2009

Subject: Permit for Monterey Bay Shores Resort

MPWMD

Dear MPWMD Board of Directors:

LandWatch would like to take this opportunity to reiterate and expand on our previous comments:

Inadequate Environmental Document

The addendum prepared by the City of Sand City is an inappropriate and inadequate environmental document to address numerous issues that have occurred since the FEIR was certified in 1997. A subsequent EIR is needed to meet CEQA requirements.

The District can and should not approve the project based on the information before you. The Board has not been directed to review the FEIR as required by CEQA; in fact, that document has not been made readily available to the Board of Directors for its consideration. Additionally, the addendum has not been certified by the City of Sand City per the resolution adopted on January 20, 2009. The City's resolution specifically defers to some unknown future date adoption of final environmental documents. We do not see how the Board can rely on an uncertified addendum which could be changed at a future date. (See http://www.mpwmd.dst.ca.us/asd/board/boardpacket/2009/20090226/15/item15_exh15q.pdf).

Additional Issues Requiring Environmental Review

In addition to the water issues outlined in our previous letter, we note the following:

1. 90 AFY from Seaside Groundwater Basin. Additional review is needed to address the 90 AFY to be extracted from the over drafted Seaside Groundwater Basin. As noted in the DEIR for the Coastal Water Project, the Basin's safe yield is 2,581 to 2,913 AFY (p. 4.2-15), and extractions in 2007 were 41,423 AFY (p. 4.2-16). In an over drafted aquifer, every additional pumping has a negative impact. Additionally, because there was no EIR for the Seaside Basin Adjudication, the impact of exercising the additional 90 AFY of paper water rights is unknown.
2. Year-Round Pumping: Technical Issues; Costs. The latest MPWMD staff report

indicates the Paralta well has never been pumped year-round, since it was only intended to handle dry-season pumping to supply the Peninsula when the Carmel River cannot be pumped. It appears that the proposed project would require for the first time the Paralta well to be pumped during the wet season, presumably just 90 AFY worth. Again, the staff report indicates that pumps and wells are usually either going full throttle or not at all. There are unknown technical issues related to year-round pumping. Further, no investigation of environmental issues of year-round pumping has been undertaken.

Additionally, if there are technical problems resulting from year-round pumping, or additional maintenance costs, Cal Am would likely seek ratepayers funds to repair the well/pump. However, only the project applicant would benefit from year-round pumping.

3. Sand Removal. The project requires removal of 420,000 cubic yards of sand. The destination of the sand could have adverse affects on water resources or other public trust resources the District must protect. Because the destination of the sand is not identified with certainty in the addendum, this issue should also be addressed in a Subsequent EIR.

In conclusion, LandWatch urges the Board to delay a decision until a Subsequent EIR is prepared or to deny the project based on significant impacts on water resources.

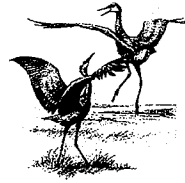
Sincerely,



Chris Fitz
Executive Director

cc: Darby Fuerst, General Manager

CALIFORNIA ENVIRONMENTAL LAW PROJECT
A Non-Profit Legal Corporation



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February 24, 2009

Kristi Markey, Chair, and
Board of Directors
Monterey Peninsula Water Management District
P.O. Box 85
Monterey CA 93942

Subject: Application of Cal-Am and SNG for Water Distribution Permit To Serve
Monterey Bay Shores Ecoresort

Dear Chair Markey and Directors:

Since 1892, the Sierra Club has been working to protect communities, wild places, and the planet itself. The Sierra Club is the oldest and largest grassroots environmental organization in the United States. The Ventana Chapter of the Sierra Club has 6,000 members. For many years, the Chapter has been actively involved in water issues and has participated in the public review of projects by the Monterey Peninsula Water Management District.

The Sierra Club strongly opposes the granting of a permit for the water distribution system for the 341-room development on the fragile dunes of Sand City. Throughout the time that the various versions of this project have been reviewed, the Sierra Club has participated in the reviews by the Sand City, California Coastal Commission (CCC), and MPWMD.

The Addendum Is Inadequate and a SEIR Must be Prepared by the District

The 2008 DEIR addendum prepared by the developer is inadequate under CEQA. The MPWMD should not rely on the addendum because it has not been adopted by the City of Sand City, the lead agency under CEQA. Furthermore, the addendum fails to address the changed circumstances relating to Seaside Basin overdraft and the Draft SWRCB Cease and Desist Order, or the following impacts caused by the Monterey Bay Shores Project:

- The environmental impacts on the overdrafted Seaside aquifer of an additional 90 afy pumping.
- The resultant 90 afy cutbacks to the pumping of standard producers including the Cal Am and Seaside Municipal water systems, on top of the cutbacks and other

Kristi Markey, Chair, and
Board of Directors
Monterey Peninsula Water Management District
February 24, 2009
Page 2

effects of any permanent cease and desist order issued by the SWRCB, all of which reduce the legal water available to the public.

- The environmental impacts of resultant cutbacks on standard producers, including Cal Am and Seaside Municipal. (Under the basin adjudication, these curtailments of production would be required as a direct result of this project.)
- The potential water resource public trust impacts of the 420,000 cu.yds of sand to be moved to undisclosed location(s).

Additionally, the environmental documentation fails to consider the alternative water supplies of either on-site wells (as proposed in 1998-2001) or Sand City desalination plant production, both of which are possible alternative supplies and/or possible mitigations for the impacts of the project. These are feasible alternative or feasible mitigation measures within the MPWMD's powers that would substantially lessen or avoid any significant effect the project would have on the environment. Under CEQA Guidelines, section 15096(g)(2), MPWMD has the responsibility for mitigating or avoiding the direct and indirect environmental effects of the proposed water supply arrangement between Cal Am and SNG to service the project.

The Purpose of the California Environmental Quality Act:
To Ensure that Agencies Give Primary Consideration to Preventing
Environmental Damage, Based on Adequate Information

Here is what our Court of Appeal stated in rejecting the flawed September Ranch EIR in 2001:

[T]he overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage. (*Laurel Heights Improvement Assn. v. Regents of University of California, supra*, 47 Cal. 3d at p. 390.) CEQA is the Legislature's declaration of policy that all necessary action be taken "to protect, rehabilitate, and enhance the environmental quality of the state." (*Id.* at p. 392; Pub. Resources Code, § 21000.) "The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decisionmakers, and the public, with the information about the project that is required by CEQA." [Citation.] The error is prejudicial 'if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.' " (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra*, 27 Cal.App.4th at pp. 721-722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency, supra*, 76 Cal.App.4th at p. 946.) When the informational requirements of CEQA are not complied with, an agency has failed to proceed in "a manner required by law" and has therefore abused its discretion.

(*Save Our Peninsula Committee, et al., v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 117-118.)

Kristi Markey, Chair, and
Board of Directors
Monterey Peninsula Water Management District
February 24, 2009
Page 3

As to the Monterey Bay Shores project, the MPWMD should deny the application based on the current flawed environmental documentation. The MPWMD must fulfill CEQA's requirement to have adequate information before it regarding the environmental impacts of the project *before* it makes a decision to approve the project.

If The Developer Wants To Pursue The Project,
The MPWMD Should Require A Subsequent EIR

Responsible Agency: For this project, the MPWMD is a responsible agency under CEQA. (CEQA Guidelines, § 15381.) "A responsible agency may refuse to approve a project in order to avoid direct or indirect environmental effects of that part of the project which the responsible agency would be called on to carry out or approve." (CEQA Guidelines, § 15042; *Save Our Carmel River v. Monterey Peninsula Water Management District* (2006) 141 Cal.App.4th 677, 701.)

Subsequent EIR: The MPWMD has the authority to require a Subsequent EIR under CEQA Guidelines §§ 15096 (f) and 15162 (c). (See attached Guidelines.) As a responsible agency, the MPWMD should require a Subsequent EIR to identify the direct and indirect effects on the water and other public trust resources under the MPWMD's authority, given the changed circumstances relating, *inter alia*, to water delivery to the Project and the substantial changes to the project. The 1998 EIR and the 2008 unadopted addendum fail to provide this essential information. Without this information, the MPWMD cannot properly approve this project under CEQA.

Impacts of 90 afy Additional Pumping on Overdrafted Seaside Basin: No environmental impact report was prepared in connection with the Seaside basin adjudication, or for the impacts of the paper water rights awarded in the adjudication. As a responsible agency under CEQA, before the MPWMD Board acts on the application for a water distribution system that relies on the overdrafted Seaside basin, the MPWMD should inform itself of the environmental impacts of the additional 90 afy pumping from the basin. There is no question that increased pumping from an overdrafted basin may have adverse environmental impacts. The MPWMD does not have information as to what those impacts would be in this case.

The Seaside basin adjudication awarded water rights to this property. Now that the developer is proposing to implement a water distribution system, using Cal-Am as a purveyor rather than a mutual water company, an EIR is required on the resulting impacts of that proposal. The situation here is similar to the September Ranch subdivision for which two EIRs were prepared, in 1998 and 2006. The Sierra Club and other public interest groups successfully challenged both EIRs. Both EIRs' analyses of water issues were found to be flawed. (*Save Our Peninsula Committee, et al., v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99; *Sierra Club, et al. v. County of Monterey*, 2008, Superior Court of California, County of Monterey, Case no. M82632.) For the September Ranch subdivision, the developer first had to prove valid water rights, and then the EIR had to analyze the environmental impacts of exercising those water rights. That essential second step – analyzing the impacts of exercising the water rights through an application for a water distribution permit – has not been done here.

The MPWMD should require a Subsequent EIR to address the impacts of this proposed additional pumping. The analysis should include investigation of the cumulative impacts, changes to the environment resulting from the incremental impact of the project which added to other closely related past, present, and reasonably foreseeable future projects. (CEQA Guidelines, § 15355, subd. (b).) These reasonably foreseeable future projects include those water rights that were awarded in the adjudication but have not yet been exercised. For example: King Ventures has an agreement with the city to build a resort at the end of Playa Avenue, which would be extended under Highway 1 toward the beach. The DEIR is expected to be completed in the next few months so the cumulative effects have not yet been addressed..

The MPWMD should not dismiss the 90 afy as too small to have an impact on the Seaside basin, because that "ratio approach" does not comply with CEQA. With a safe yield of only 3,000 afy, incremental pumping of 90 afy may cause significant impacts, especially when cumulative impacts are considered. "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (CEQA Guidelines, § 15355, subd. (b).) In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, the Court of Appeal rejected the "ratio approach" to impacts in an over-impacted air basin. The Court required the public agency to redo the EIR and to investigate the issue of whether any additional amount of impacts should be considered "significant" in light of the existing environmental situation. Here, in an already overdrafted basin, it is likely that the impacts of an additional 90 afy pumping will be significant.

Impacts of 90 afy Additional Pumping on Standard Pumpers under the Seaside Basin Adjudication, Causing Further Reduced Pumping by Cal Am and Seaside Municipal: Given its coordination powers, before it makes a decision on the proposed water system, the MPWMD should be informed of the water supply impacts of the proposed additional production (90 afy) from the Seaside aquifer on other producers, specifically Seaside Municipal and Cal Am and their customers. Under the adjudication, standard producers are required to reduce their current pumping in order to accommodate alternative producers like SNG who elect to start new actual water pumping under their paper water rights. For the incremental 90 afy SNG proposes to pump from the basin, the standard producers such as Seaside Municipal and Cal Am will have to cut back another 90 afy of current pumping that provides current customers with water in order to stay within the allocated production quota for the aquifer.

In 2000, regarding this Monterey Bay Shores development, Cal Am stated:

Unless the [Seaside] groundwater basin is in a state of overdraft, no conflict in the exercise of our respective rights exists.

In this regard, we are not aware of any determination to date that the groundwater basin is in a state of overdraft.

Cal-Am's main concern is to insure that the prospective operation of the Monterey Bay Shores Mutual Water Company will not interfere with or adversely affect the ability of Cal-Am's existing system to provide water to its customers.

(Cal Am, Stuart Somach letter to MPWMD, June 21, 2000, p. 1, emphasis added.) (Attachment A)

In fact, in 2009, the Seaside basin is in a state of overdraft, and there is a conflict in the exercise of Cal Am's rights with the exercise of SNG's rights. And the proposed exercise of SNG's water rights will interfere with and adversely affect the ability of Cal Am to provide water to Cal Am's existing customers. This is because Cal Am, a standard pumper under the Seaside basin adjudication, must reduce its pumping significantly to convey 90 afy to SNG's site for the project. Given the existing constraints Cal Am is under due to Order 95-10, these further cutbacks will reduce Cal Am's ability to provide legal water to its customers. (Apparently, Cal Am, as an applicant before the MPWMD on this project in 2009, has changed its position from its 2000 position. However, Cal Am's letter of June 21, 2000 admitted that Cal Am had already changed its position twice before, because in 1998 Cal Am stated that it would cooperate with SNG's new water pumping (November 10, 1998 letter from Judy Almond), and in 1999 Cal Am opposed a permit for SNG (September 7, 1999 letter from Leonard Weiss). (Attachment B)

None of these environmental issues, water rights conflicts, and cumulative impacts have been explored adequately under CEQA. To fulfill its mandates under its enabling legislation, the MPWMD should require this information prior to making a decision on the permit application. A Subsequent EIR would provide this information.

The District Cannot Verify that the Applicants Have Satisfied
a Condition of the Sand City Approval of the Project in 1998

Further, the Final EIR for the Monterey Bay Shores project requires the following mitigation:

The MPWMD shall verify . . . that either (1) groundwater pumping needed for the project . . . shall not exceed present groundwater basin extractions by causing commensurate amount of water pumping reduction; or (2) basin management and production enhancement techniques have been implemented which increase the safe yield of the Basin in an amount sufficient to satisfy the demand from this project.

(Final EIR, October 1998, p. 158.) This required mitigation still applies, and the MPWMD is required to enforce it. The determination of water rights under the Seaside basin adjudication has not eliminated the applicability of this required mitigation. The MPWMD has not made either of these two verifications required by the mitigation. Nor can these verifications be made, for the following reasons:

- (1) The proposed 90 afy groundwater pumping will exceed current basin extractions in the short term and will require commensurate pumping reduction by Cal Am, Seaside Muni, and other standard pumpers under the Seaside Basin Adjudication, and
- (2) The safe yield has not been increased since 1998, but in fact has decreased significantly. According to the 1998 Final EIR (p. 155), the basin's safe water

Kristi Markey, Chair, and
Board of Directors
Monterey Peninsula Water Management District
February 24, 2009
Page 6

yield was thought to be 4,375 afy and the 1997 pumping was 4,496 afy, which is a 118 afy overdraft. The March 2006 Seaside Basin adjudication established a Natural Safe Yield of the Seaside Basin of 3,000 afy. Current pumping ranges from 4,600 afy to 6,000 afy, averaging 5,400 afy, which is a 2400 afy overdraft. (Source: MPWMD Seaside Basin Questions and Answers, September 2008.)

This provides further evidence of the need for a Subsequent EIR to analyze project and cumulative effects on the overdrafted basin.

There Needs to Be an Analysis of the Environmental Effects of Project Alternatives

On-Site Wells Alternative: The MPWMD should have information before it concerning the environmental impact of the Cal-Am pumping proposal (through the Peralta well) relative to the environmental impact of direct drilling on site through the exercise of overlying rights. The 1998 Final EIR for the Monterey Bay Shores project found that:

Groundwater resources within the coastal Seaside Subareas could be more effectively optimized by spreading out production throughout the entire coastal subareas, and by increased utilization of the Paso Robles aquifer. A portion of the production from the Paralta well should be shifted to shallower wells in the Northern Coastal Subarea . . .

(Final EIR, October 1998, p. 156.) This recommendation is consistent with “Fugro’s recommendation to shift production to the Paso Robles aquifer and reduce production from the Paralta well” (id., p. 157). Therefore, onsite direct drilling is a reasonable and feasible alternative to the proposed project, and could help achieve the goal as stated in the certified Final EIR. (The proposed project contemplates production from the Peralta Well.)

Desalination Alternative: The MPWMD should require a Subsequent EIR to investigate the alternative of supply to SNG from the City’s approved desalination plant. In light of the proposed SWRCB cease and desist order, water resource impacts, and the constraints on growth in the Seaside basin due to water availability, it may be appropriate for Sand City to provide the water through its proposed desalination plant, as an environmentally preferable alternative to the proposed Cal Am wheeling project.

MPWMD Ordinance 132 allocates water from the Sand City Desal Plant for the purpose of allowing “for the expansion of commercial and residential uses within Sand City, thereby contributing to the economy within MPWMD, as well as providing new housing opportunities within the MPWMD.” (Para. 21). Water is allocated to properties located “within the jurisdictional limits of the City of Sand City that also lie within the service area for the CAW System as recognized in 2007...” Under this and a related application, the CAW service area will be extended to the SNG parcel. If preparation of a SEIR reveals that water would best be supplied to SNG from the Sand City Desal Plant, the District retains full authority to amend Ordinance 132 to allocate plant water to any property currently lying within the Cal-Am service area.

Water Resources Impacts of Moving 420,000 Cubic Yards of Sand: Another potential problem is the water resources and public trust impacts caused by the development's proposed removal of 420,000 cubic yards of sand from over 28 acres. This 420,000 cubic yards amount was estimated by the developer, and has not been verified from an independent source. According to the Addendum prepared by the developer, the developer proposed trucks carrying 40 cubic yards. 420,000 cy means 10,500 one-way truck trips loaded with sand, and over 21,000 round trips. (Addendum, 4.15.2.4 -- Construction Impacts.) It is unknown where those 420,000 cubic yards of sand will end up. The sand could be sold to other developments at unidentified locations and with unidentified impacts. If the sand is placed on the floor of Carmel Valley for development purposes, the sand could have a significant impact on the Carmel River or the endangered species in the River. If the sand is placed elsewhere, it may have other impacts on water resources or on public trust resources.

Due to the quantity of sand involved, and the fact that most significant non-infill development is taking place in the County, it is likely that the sand would end up somewhere in the County. The MPWMD should not defer to the County the future determination of impacts of this sand movement, because the County of Monterey has admitted that it does not determine the source of fill for construction projects. Further, in the Club's experience, the County rarely requires careful review of environmental impacts created by grading. Accordingly, the critical water resources impacts likely would not be evaluated adequately by the County.

If the 420,000 cubic yards of sand ends up in a landfill, the possible environmental issues also should be addressed. For example, the closest likely landfill is in Marina. The Salinas River Diversion Facility of the Salinas Valley Water Project is currently under construction adjacent to the Marina landfill. The Salinas River Diversion Facility is a \$15+ million water resources project funded by the public in an effort to reduce the significant seawater intrusion in the Salinas Valley which has been identified for over 60 years. (Department of Public Works, Division of Water Resources (DWR). 1946a. Bulletin 52. Salinas Basin Investigation.) The potential impacts of 420,000 cubic yards of sand on that Facility, and the mitigations necessary to prevent those impacts, should be addressed in a Subsequent EIR. Sand itself is a public trust resource, and how this project's 420,000 cubic yards of sand is to be handled should be investigated, the destinations should be identified, and the environmental impacts -- on water and other public trust resources for which the MPWMD is responsible -- should be discussed.

The Subsequent EIR Would Identify Feasible Alternatives.
If a Feasible Alternative Exists, MPWMD Must Choose the Alternative.

As a responsible agency, the MPWMD cannot approve a project if there is feasible alternative. Under CEQA Guidelines, section 15096 (g)(2),

When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment.

Kristi Markey, Chair, and
Board of Directors
Monterey Peninsula Water Management District
February 24, 2009
Page 8

Here, there is at least one feasible alternative, which is the use of desalinated water from the Sand City plant instead of further pumping from the Seaside Aquifer. Pumping from onsite wells and distribution by a mutual water company may also be a feasible alternative (and was the previously approved modality).

The problem here is that because the environmental documentation is inadequate, the MPWMD and the public do not know what other feasible alternatives or feasible mitigation measures exist that would substantially lessen or avoid any significant effect the project would have on the environment. A Subsequent EIR would identify these feasible alternatives and feasible mitigation measures. The MPWMD should require a Subsequent EIR.

There are Three Versions of the Addendum.
The City of Sand City Has Not Adopted Any of Them.

There are at least three versions of the addendum released to the public so far: one marked "Addendum October 2008" one marked "Revised Draft Addendum October 2008" and one marked "October 2008" with the handwritten notation "Revised December 08." The MPWMD staff report refers to an addendum of October 2008, but printed November 2008. It is unclear to the public which version is under consideration by MPWMD, and which is the most current version.

None of the versions of the addendum have been adopted by the City of Sand City. The applicant's attorneys claimed the City "adopted the Addendum" (Lombardo & Gilles letter to MPWMD, January 21, 2009, p. 1.) That claim was incorrect. Sand City Resolution CY-06 2009 resolves only that no major revisions to the EIR are required for the Revised Project and that no subsequent EIR is required for the Revised Project. The Resolution recites "the City will make a final determination under CEQA with respect to the Project as permitted by the Coastal Commission at the time the City takes action on the local approvals referred to in paragraph 3."

The Staff Report for the February 26 meeting is in error in stating that the "City of Sand City formally adopted the Addendum." It clearly did not do so.

The 1998 EIR and Unadopted Addendum Do Not Address Impacts of
Pumping from Existing On-Site Wells.

The environmental documents (1998 EIR and unadopted 2009 addendum) do not address the possibility that the applicant would get 90 afy from Cal Am and then pump additional water from its onsite wells to supplement the Cal-Am water. That scenario could involve unaccounted for pumping, and further exacerbation of the Seaside basin overdraft. This issue should be investigated in a Subsequent EIR, and effective mitigations put in place to prevent these impacts. The Sierra Club supports the proposed MPWMD condition on the on-site wells, and limiting the overall site demand to the total rights. All reports and documents required to be submitted to MPWMD under any final permit should be public records, and the conditions should make this clear. Additionally, the applicant should be required to pay the MPWMD costs in monitoring the use, and in enforcing this and all other conditions.

System Losses

The Sierra Club supports the MPWMD requirement that the Cal Am pumping account for the system losses. However, the Cal Am 10% system loss factor should be imposed, not 7%. The difference between 7% and 10% is 2.7 afy, which is enough for almost 11 houses, assuming the Peninsula's average consumption of 0.25 afy. 2.7 afy is a significant amount of water on the Monterey Peninsula today. The MPWMD should require a 10% system loss factor. Cal Am could be given the right to request a lower system loss figure, which should be considered by the Board in a public hearing.

Impacts of Year-Round Operations of Cal Am Seaside Wells

According to the MPWMD staff report for the February 26, 2009 Board meeting, the proposal would require Cal Am to operate its Seaside wells year round, which Cal Am has never done before. Up until now, Cal Am has not operated its Seaside wells during the wet season. Further, during the wet season Cal Am would pump at a reduced rate, rather than at the full-throttle rate to which the pump is accustomed. As a result of year-round pumping including months at a reduced rate, there may be significant impacts on the environment and on Cal Am ratepayers. Would there be additional maintenance costs? What harm would the reduced-throttle pumping cause to the pump mechanisms?

Cal Am ratepayers should not have to pay for a special deal between Cal Am and this 341-unit Monterey Bay Shores project. The additional cost to Cal Am ratepayers may reduce the ratepayers' ability to pay for solutions to resolving Order 95-10 and the reduced pumping caused by the Seaside basin adjudication. These are far more significant impacts than the technical issues that have been identified to date. No MPWMD condition addresses this issue, and there is no environmental documentation investigating the possible impacts. These impacts should be investigated in a Subsequent EIR.

Documents Attached for Your Review

The Sierra Club attaches and incorporates by reference several documents. We attach the shorter documents; the longer documents, many of which are already in the Board's possession, we attach by providing their website location. We submit this information to the Board for its review prior to its decision on this matter, and for inclusion in the record of proceedings.

The Final EIR Has Not Been Made Available to the Public or the MPWMD Board

The MPWMD Board has not been provided with the Draft EIR or the Final EIR for this project. Further, the Board has not been advised that it should review the EIR. The Board should not rely on an addendum without first reviewing the underlying EIR.

Additionally, the addendum is not available at the Sand City website (sandcity.org) as the developer claimed.

Kristi Markey, Chair, and
Board of Directors
Monterey Peninsula Water Management District
February 24, 2009
Page 10

MPWMD Has Authority to Require a Subsequent EIR

For this project, MPWMD is a responsible agency under CEQA. In the Seaside basin adjudication, MPWMD pointed out that unless it was appointed Watermaster there may be conflict between its ground water management authority and the Court's physical solution. In the adjudication decision, Judge Randall noted that although "the Decision grants certain rights of control to the Watermaster for the purpose of maintaining the viability of the Aquifer, it does not purport to forbid any regulation of the Basin which may be required by a public agency possessing the power to impose such regulation." (Decision at 49 -50.) In other words, in carrying out its mission and mandates, the MPWMD retains all of its authority and powers under the California Environmental Quality Act (CEQA), including the ability to require a Subsequent EIR for this project. Further, the MPWMD is not prohibited from investigating alternatives to and mitigations for water distribution systems which require discretionary approval.

The MPWMD Should Deny the Project, or
Alternatively, the MPWMD Should Require a Subsequent EIR.

The Sierra Club urges the MPWMD to enforce its rules and regulations and the California Environmental Quality Act. We support the MPWMD and want it to be an agency with high integrity. We urge the MPWMD to act in the public interest and to fulfill its mandate to protect the Monterey Peninsula water supply and the environment.

In *Save Our Carmel River v. Monterey Peninsula Water Management District* (2006) 141 Cal.App.4th 677, the Court of Appeal held that the MPWMD had violated both CEQA and the MPWMD's own rules when the MPWMD approved a project without looking properly at the site-specific impacts or the overall environmental impacts. In *Save Our Carmel River*, the Court held that the MPWMD's approval was not supported by substantial evidence in the record, "in part because it was based on the City's determination as lead agency, but also because the MPWMD did not consider the possible cumulative impacts of the project" (*id.*, at p. 683). Sierra Club requests that you not rely on the flawed conclusions of the lead agency Sand City, and do not ignore the possible environmental impacts of this project.

The MPWMD Rule 22 sets forth only the *minimum* standards for approval of a water distribution system. The MPWMD can require additional information and assurance in addition to the minimum standards. Nothing prohibits the MPWMD from exercising its full authority under CEQA and ensuring that the public is informed of the environmental impacts of the project before MPWMD acts on the application. Each time the MPWMD staff and Board has taken a closer look at this project, additional issues and problems have been identified. The conditions of approval currently number 33, and the conditions become longer and more complex the more this project is appropriately scrutinized. Many questions and environmental concerns remain, and are arising continuously. They should be resolved by a Subsequent EIR. They cannot be adequately addressed by an unwieldy set of 33 conditions that are not informed by a current SEIR under current environmental conditions.

Kristi Markey, Chair, and
Board of Directors
Monterey Peninsula Water Management District
February 24, 2009
Page 11

For all the above reasons, the Sierra Club urges the MPWMD to deny the project based on the inadequate environmental documentation. If the project applicant wishes to pursue the project, the MPWMD should require a Subsequent EIR to investigate the project impacts on water resources and the other public trust resources.

We thank the MPWMD for its efforts to date to address these very complex issues.

Sincerely,

Laurens Silver
California Environmental Law Project

*received via email
2/24/09*

Attachments:

1. CEQA Guidelines §§ 15096 (f) and 15162 (c), attached and available at http://ceres.ca.gov/ceqa/guidelines/15080-15097_web.pdf
2. Seaside Groundwater Basin Questions and Answers (MPWMD, September 11, 2008), available at <http://www.mpwmd.dst.ca.us/seasidebasin/ord135/OAOrd135091108.pdf>
3. MPWMD April 25, 2005 press release, attached and available at <http://www.mpwmd.dst.ca.us/seasidebasin/index.html>
4. SEASIDE GROUNDWATER BASIN: UPDATE ON WATER RESOURCE CONDITIONS (Yates et al., April 14, 2005), available at http://www.mpwmd.dst.ca.us/seasidebasin/TM_rev_14APR05.pdf
5. SWRCB Draft Cease and Desist Order WR 2008-00XX-DWR - In the matter of the unauthorized diversion of water by CAW – Carmel River in Monterey County, available at <http://www.waterrights.ca.gov/Hearings/docs/caw/cdofinaldraft.pdf>
6. Monterey Bay Shores Final EIR, pages 155 through 158 (October 1998).

Attachment 1

CEQA Guidelines § 15096. Process for a Responsible Agency

(a) General. A Responsible Agency complies with CEQA by considering the EIR or Negative Declaration prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved. This section identifies the special duties a public agency will have when acting as a Responsible Agency.

(b) Response to Consultation. A Responsible Agency shall respond to consultation by the Lead Agency in order to assist the Lead Agency in preparing adequate environmental documents for the project. By this means, the Responsible Agency will ensure that the documents it will use will comply with CEQA.

(1) In response to consultation, a Responsible Agency shall explain its reasons for recommending whether the Lead Agency should prepare an EIR or Negative Declaration for a project. Where the Responsible Agency disagrees with the Lead Agency's proposal to prepare a Negative Declaration for a project, the Responsible Agency should identify the significant environmental effects which it believes could result from the project and recommend either that an EIR be prepared or that the project be modified to eliminate the significant effects.

(2) As soon as possible, but not longer than 30 days after receiving a Notice of Preparation from the Lead Agency, the Responsible Agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the Responsible Agency's statutory responsibilities in connection with the proposed project. The Lead Agency shall include this information in the EIR.

(c) Meetings. The Responsible Agency shall designate employees or representatives to attend meetings requested by the Lead Agency to discuss the scope and content of the EIR.

(d) Comments on Draft EIRs and Negative Declarations. A Responsible Agency should review and comment on draft EIRs and Negative Declarations for projects which the Responsible Agency would later be asked to approve. Comments should focus on any shortcomings in the EIR, the appropriateness of using a Negative Declaration, or on additional alternatives or mitigation measures which the EIR should include. The comments shall be limited to those project activities which are within the agency's area of expertise or which are required to be carried out or approved by the agency or which will be subject to the exercise of powers by the agency. Comments shall be as specific as possible and supported by either oral or written documentation.

(e) Decision on Adequacy of EIR or Negative Declaration. If a Responsible Agency believes that the final EIR or Negative Declaration prepared by the Lead Agency is not adequate for use by the Responsible Agency, the Responsible Agency must either:

(1) Take the issue to court within 30 days after the Lead Agency files a Notice of Determination;

(2) Be deemed to have waived any objection to the adequacy of the EIR or Negative Declaration;

(3) Prepare a subsequent EIR if permissible under Section 15162; or

(4) Assume the Lead Agency role as provided in Section 15052(a)(3).

(f) Consider the EIR or Negative Declaration. Prior to reaching a decision on the project, the Responsible Agency must consider the environmental effects of the project as shown in the EIR or Negative Declaration. A subsequent or supplemental EIR can be prepared only as provided in Sections 15162 or 15163.

(g) Adoption of Alternatives or Mitigation Measures.

(1) When considering alternatives and mitigation measures, a Responsible Agency is more limited than a Lead Agency. A Responsible Agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.

(2) When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. With respect to a project which includes housing development, the Responsible Agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

(h) Findings. The Responsible Agency shall make the findings required by Section 15091 for each significant effect of the project and shall make the findings in Section 15093 if necessary.

(i) Notice of Determination. The Responsible Agency should file a Notice of Determination in the same manner as a Lead Agency under Section 15075 or 15094 except that the Responsible Agency does not need to state that the EIR or Negative Declaration complies with CEQA. The Responsible Agency should state that it considered the EIR or Negative Declaration as prepared by a Lead Agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21165, 21080.1, 21080.3, 21080.4, 21082.1, and 21002.1(b) and (d), Public Resources Code.

15162. Subsequent EIRs and Negative Declarations

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

(c) Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subdivision (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

(d) A subsequent EIR or subsequent negative declaration shall be given the same notice and public review as required under Section 15087 or Section 15072. A subsequent EIR or negative declaration shall state where the previous document is available and can be reviewed.

Note: Authority cited: Public Resources Code Section 21083; Reference: Section 21166, Public Resources Code; Bowman v. City of Petaluma (1986) 185 Cal.App.3d 1065; Benton v. Board of Supervisors (1991) 226 Cal.App.3d 1467; and Fort Mojave Indian Tribe v. California Department of Health Services et al. (1995) 38 Cal.App.4th 1574.

15163. Supplement to an EIR

(a) The Lead or Responsible Agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

- (1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and
- (2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

(b) The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.

(c) A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087.

(d) A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.

(e) When the agency decides whether to approve the project, the decision-making body shall consider the previous EIR as revised by the supplemental EIR. A finding under Section 15091 shall be made for each significant effect shown in the previous EIR as revised.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21166, Public Resources Code.

Attachment 3

MPWMD RELEASES UPDATE ON SEASIDE BASIN WATER RESOURCE CONDITIONS
-PUBLIC WORKSHOP SET FOR MAY 5, 2005

Contacts: Dave Berger, MPWMD General Manager, 658-5650
Joe Oliver, MPWMD Water Resources Manager, 658-5640
Darby Fuerst, MPWMD Senior Hydrologist, 658-5651

Monterey, April 25, 2005. The Monterey Peninsula Water Management District (MPWMD or District) announced the availability of a new report on the status of the Seaside Groundwater Basin. The peer-reviewed report, *Seaside Groundwater Basin – Update on Water Resource Conditions*, was authored by expert consultants retained by MPWMD as part of the District's ongoing preparation of a Seaside Basin Groundwater Management Plan in compliance with State of California guidelines. The report took over two years to prepare and provides an overview of previous studies and conclusions about the Seaside Basin. The report evaluates new information developed since the District's last comprehensive report was prepared in 1997.

The technical report makes important new findings and conclusions about the status of the Seaside Basin and sustainable water yield for the community. The analysis shows consistently declining water levels and deficit water budgets over an 8-year period, indicating that the Basin is in a state of overdraft since groundwater extractions exceed the sustainable yield.

MPWMD Board Chairman Larry Foy stated, "The Basin report's findings and conclusions are significant. The report recommends positive technical and management solutions to address the declining groundwater situation. This will be the District Board's primary focus as we develop the Groundwater Management Plan in cooperation with effected public agencies, water purveyors and other Basin stakeholders."

This report will be the subject of a public workshop of the District's Groundwater Management Plan Advisory Committee, which is comprised of Seaside Basin stakeholders, scheduled for Thursday, May 5 at 3:00 PM at the MPWMD Conference Room located at 5 Harris Court, Building G, Monterey (Ryan Ranch). A public review copy of the report is available at the District office; individual copies on CD may be purchased for \$5. The report will also be placed on the MPWMD website: www.mpwmd.dst.ca.us/seasidebasin.

The 20-square-mile Seaside Basin underlies the cities of Seaside and Sand City; and parts of the cities of Del Rey Oaks and Monterey, former Fort Ord and the Highway 68 corridor to Laguna Seca. The Basin provides water supply for about 25% of California American Water (Cal-Am) distribution system, the City of Seaside municipal system, two golf courses in the Seaside area, and several industrial users.

U:\David\2005\SSbasinReportV3_042505.dab final.doc

Attachment A

STUART L. SOMACH
A BARRISTER IN CALIFORNIA AND
IN THE DISTRICT OF COLUMBIA

DE CUIR & SOMACH
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
400 CAPITOL MALL
SUITE 1900
SACRAMENTO, CA 95814-4407
TELEPHONE (916) 446-7879
FACSIMILE (916) 446-8189

M.P.W.M.D.
JUN 23 2000
RECEIVE

June 21, 2000

Ms. Molly Erickson, Chairman
Monterey Peninsula Water
Management District
P.O. Box 85
Monterey, CA 93942-0085

Re: Monterey Bay Shores Mutual Water Company

Dear Ms. Erickson:

This firm represents the California-American Water Company ("Cal-Am") in the above referenced matter. It appears that, over time, Cal-Am's position with respect to the issuance of a permit by the District for the creation of a water distribution system for the Monterey Bay Shores Mutual Water Company has changed. Ms. Almond's November 10, 1998 letter on this subject appeared to support the issuance of the permit, and Mr. Weiss' September 7, 1999 letter opposed the permit.

Upon further examination of the matter, Cal-Am has no reason to believe that the exercise of overlying rights by the proposed mutual water company to pump up to 125 acre feet per year of water from the Seaside Groundwater Basin will impair or in any way interfere with Cal-Am's ability to fully exercise its appropriative rights to extract water from the Seaside Groundwater Basin. Unless the groundwater basin is in a state of overdraft, no conflict in the exercise of our respective rights exists.

In this regard, we are not aware of any determination to date that the groundwater basin is in a state of overdraft. In fact, as you are aware, statements to the contrary have been made by District staff at hearings.

Cal-Am's main concern is to insure that the prospective operation of the Monterey Bay Shores Mutual Water Company will not interfere with or adversely affect the ability of Cal-Am's existing system to provide water to its customers. In this context, Cal-Am will, to the best of its ability, coordinate its production from the Seaside Basin with the prospective use associated with Monterey Bay Shores in order to maximize its ability to operate within the safe yield of the basin.

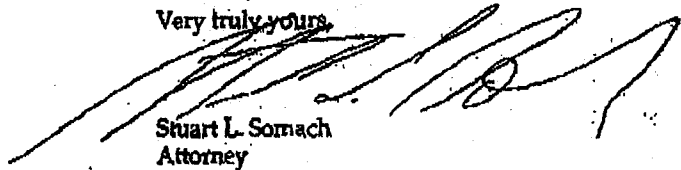
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Ms. Molly Erickson, Chairman
June 21, 2000
Page 2

Please do not hesitate to contact me if you have any questions or need additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stuart L. Somach", written over a horizontal line.

Stuart L. Somach
Attorney

SLS:sb

cc: Judith L. Almond
Jan S. Driscoll
Lloyd W. Lowrey, Jr.
Darby Fuerst

1656

011431



Attachment B

California-American Water Company

Monterey Division
50 Ragsdale Dr., Suite 100, P.O. Box 951 • Monterey, CA 93942-0951

November 10, 1998

Judith L.
Manager

Mr. Ed Ghandour
Security National Guaranty
50 Santa Rosa Avenue, Suite 503
Santa Rosa, CA 95404

CITY OF SAND CITY

NOV 10 1998

RECEIVED

RE: Water for Monterey Bay Shores Project
Sand City, California

Dear Mr. Ghandour:

I am writing to confirm discussions held between representatives of Cal-Am and SNG about water service for the Monterey Bay Shores Project in Sand City, California, located outside the service area of Cal-Am.

It is our understanding that Monterey Bay Shores will require 95 to 125 acre feet of water per year and that you propose to form a mutual water company to provide water distribution service to the property which is under a single ownership. Production will be from on-site wells drilled and perforated in the Paso Robles Formation. As noted in the FEIR, the September 1997 Fugro West report indicates the need for coordinating the Monterey Bay Shores and Cal-Am pumping programs from the Seaside Groundwater Basin and shows the importance of effectively operating the mutual water company. You have asked for Cal-Am's participation to help address these issues.

Cal-Am's production from the Seaside Basin will be coordinated with the use for Monterey Bay Shores, consistent with any overall basin management program of the Monterey Peninsula Water Management District, to keep total extractions from the Seaside Basin within the long-term, sustainable yield as discussed in the September 1997 report by Fugro West, Inc. To facilitate that coordination, Cal-Am is willing to discuss the possibility of entering into an agreement to perform design review, plan checking, construction inspection, and preparation of "as-built" drawings for the Monterey Bay Shores water system, and to test, operate, maintain and manage the Monterey Bay Shores water system under contract with SNG.

Cal-Am expects that an agreement with SNG will be prepared and signed as soon as the project receives all necessary discretionary approvals.

Sincerely,

Judith L. Almond

JLA/mh

Administration
937-646-3291

Customer Service
937-646-3291

Fax
937-646-3291

1296

001696

Additional Attachment
from Sierra Club
email 2/24/2009 JS

Page 58, second full paragraph is revised as follows:

The safe water yield has been reduced by 100 acre-feet in this Phase III Report to 4,375 acre-feet. 1996 water use from the Paso Robles and Santa Margarita formations is ~~4,918~~ 4,763 acre-feet (Cal-Am ~~4,129~~ 4,130 acre-feet, other pumpers ~~789~~ 633 acre-feet). This information is from the Fugro West, Hydrogeologic Assessment, September 1997. This exceeds the safe water yield by ~~543~~ 388 acre-feet. This does not include any water pumped from wells in Sand City. The production data contained in the Phase III Report includes water production figures from wells in Sand City to be 11.28 acre-feet for Reporting Year (RY) 1996 and 25.1 acre-feet for RY 1997. During 1996, Sand City well water pumped was 0.2% of the water pumped from the Seaside aquifer.

Page 58, the following paragraph is inserted after the second full paragraph:

Groundwater pumping now exceeds the safe yield, which is defined in Table 6, and has been in overdraft since Cal-Am started pumping the Paralta Well in 1995. The pumping levels are below sea level as demonstrated by the negative elevations reported in the Fugro Phase III Report. In 1995 groundwater pumping of 4,701 acre-feet exceeded the safe yield by 326 acre-feet. Pumping in 1996 of 4,758 acre-feet exceeded the safe yield by 383 acre-feet. The same occurred in 1997 with 4,496 acre-feet pumped which exceeded the safe yield by 121 acre-feet. During those three years, the Cal-Am Paralta Well was pumped for 1,656 acre-feet in 1995, 1,974 acre-feet and 1,335 acre-feet in 1996 and 1997. The safe yield was exceeded by 7.5% in 1995, 8.8% in 1996, and 2.8% in 1997. It is noted that pumping from the Paralta Well was reduced by 639 acre-feet from 1996 to 1997. This also resulted in reducing the basin overdraft. Unless pumping of the Paralta well is further reduced, there will be a continuing basin overdraft of the Seaside aquifer which will exacerbate the potential for seawater intrusion.

Paralta
Well
Pumping

Page 60, the second paragraph is revised as follows:

The project engineer, Bestor Engineers, estimates that if the Monterey Bay Shores project has will have an estimated water demand of 81 acre-feet per year for domestic uses (with hotel estimated at 80% occupancy) and 13 acre-feet per year for non-domestic uses (irrigation water), for a total of 94 acre-feet per year. At 100% occupancy, the projected use would rise by about 5 acre-feet to 99 acre-feet. Another estimate provided by the Monterey Peninsula Water Management District is 125 acre-feet for 100% occupancy. Table 7 shows the estimated project water demand based on the Bestor Engineers and MPWMD projections.

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005238

Page 60, Table 7 is replaced by the following table:

| Revised Table 7 - Preliminary Estimated Project Water Demand | | | | |
|--|-----------------|--------|------------------------|--|
| Project Component | Number of Units | Factor | MPWMD Estimated Demand | Bestor Engineers Estimate ¹ |
| Luxury Hotel (incl. restaurant/bar) | 228 | 0.21 | 47.88 | 27.1 |
| Vacation Ownership (Timeshares) ² | 132 | 0.21 | 27.72 | 17.7 |
| Condominiums ³ | 237 | 0.154 | 36.498 | 36.2 |
| Irrigation | | | 13 | 13 |
| TOTAL | | | 125.098 | 94 |

Note 1: DEIR estimate assumes 80% occupancy.
 Note 2: Considered as luxury units by MPWMD.
 Note 3: Demand based on 2-bath unit; could be higher or lower water demand, depending on size.

Source: Bestor Engineers, modified by City Engineer and MPWMD.

Page 61, the following footnote, excerpted from the September 1997 Fugro report entitled *Hydrogeologic Assessment, Seaside Coastal Groundwater Subareas, Phase -III Update.*, is added to the first incomplete paragraph on the page:

Bathymetric data and projection of onshore stratigraphy seaward (Plate 18) suggest that the submarine outcrop of the Paso Robles Formation may exist at a distance of 6,500 feet, and the Santa Margarita Formation may not outcrop on the sea floor west of the study area, and south of the Monterey Bay Submarine Canyon. The offshore storage in these aquifers is significant and likely represents a buffer to seawater intrusion during periods of reversals of the seaward gradient due to pumping, deficient recharge, or short-term overdraft. However, the offshore distance to the interface with saline groundwater is unknown. As previously mentioned, the distances to the subsurface outcrop and the location of the saline interface within the aquifer units of the Paso Robles and Santa Margarita Formations are unknown. Utilizing a conservative distance of 5,000 feet and the current onshore water levels, the travel time for seawater is calculated to be greater than 200 years for the Paso Robles Formation, and 22 years for the Santa Margarita Formation. However, these estimates must be used with caution as the travel times are estimated assuming an average hydraulic conductivity value for these aquifers. Some aquifer zones within each formation may have substantially higher hydraulic conductivities, which would provide for preferential pathways and increased arrival times of saline water. Groundwater resources within the coastal Seaside Subareas could be more effectively optimized by spreading out production throughout the entire coastal subareas, and by increased utilization of the Paso Robles aquifer. A portion of the production from the Paralta well should be shifted to shallower wells in the Northern Coastal Subarea, in particular the Luzern well. In addition, the Southern Coastal Subarea should be utilized, and the additional, potential supply from the Santa Margarita Formation in the Southern Coastal Subarea should be developed. Basin management goals

should include the maintenance of average, above sea level water levels at the coast in both aquifer systems.

Page 61, the first four, complete paragraphs on the page are revised as follows:

The project's water use is estimated at 99 acre-feet per year, or 125 acre-feet per year at 100% occupancy. ~~The estimated historical use of the existing well during the operation of the sand mine is 225 acre feet annually.~~ Water use for the project will be metered, and water conservation measures will be implemented for the project to prevent excessive water use and to maintain water use at less than half of historical use. ~~Various estimates have projected that the well capacity could be between 300-800 acre feet annually~~ which is equivalent to between 185 and 500 GPM with the well pumping continuously.

At a pumping rate of ~~140~~ 125 gallons per minute, which requires operation of the pump ~~12~~ 15 hours per day, the draw down of the well(s) would be ~~18~~ 16 feet. This minimizes impacts on other wells in this section of the Seaside Groundwater Basin. Operating the well(s) for only ~~12~~ 15 hours per day allows for recovery each day, reducing the impact on the aquifer.

The closest off-site production well to the existing, on-site well is the Fort Ord Golf Course well (State Well No. T15S/R1E-14M1) located about 3,000 feet inland, and produces water from a depth of between 160 and 208 feet (between 45 and 93 feet below mean sea level) in the Paso Robles aquifer. In 1988, this well produced 350 afy. Production declined to an average of 202 afy in 1995 and 1996, and is estimated at 322 afy for 1995-1997.

Fugro's recent analysis indicates on-site production for the project would have a less than significant impact on the Fort Ord Golf Course well. The production of 93-99 afy from on-site wells would satisfy Fugro's recommendation to shift production to the Paso Robles aquifer and reduce production from the Paralta well to maintain production within the estimated long term yield of the Fort Ord Subarea. Other production wells are in the Northern Coastal Subarea, and would not be significantly affected. The Fugro study shows the theoretical distance draw down for wells in the Paso Robles Formation, derived from data obtained from the test pumping of the Paralta well. The calculations are based on an estimated transmissivity of 147 gpd/ft², a storativity coefficient of 0.005, and an assumed discharge rate of 250 gpm for 200 days (about 221 afy). Production of ~~under 100 afy~~ an estimated 125 afy from the on-site well for the project would have a correspondingly lower draw down effect.

Page 61, the following paragraph is inserted following the fourth full paragraph on the page:

Use of the on-site PCA well will further exacerbate overdraft of the Seaside aquifer by an additional 125 acre-feet and bring the combined pumping from the Seaside aquifer to over 5,000 acre-feet as compared with the estimated safe yield of 4,375 acre-feet for an overdraft in excess of 625 acre-feet.

Page 61, the bulleted paragraph beginning on this page is revised as follows:

- Hydrogeologic assessment has shown that the well could provide potable water for the proposed development, with no significant potential for waste of water, degradation of ground water or ground water depletion. In addition, there is no evidence that

indicates that use of water from the on-site well would cause seawater intrusion into the Seaside aquifer. For these reasons, the project would not result in significant impacts to groundwater resources (Less than Significant Impact) the Seaside aquifer could be in overdraft by an excess of 500 acre-feet depending upon the amount pumped from the project's well(s) and the pumping by Cal-Am and the other users of the groundwater basin. Most, if not all, wells in the groundwater basin are pumping from below sea level thus reversing the direction of groundwater flow from offshore toward the onshore wells. This results in a significant impact on the Seaside aquifer and the groundwater resources. (Potentially Significant Impact if Unmitigated)

Page 62, the first sentence of the second full paragraph is revised as follows:

The project's paved areas would be drained by an underground piped system discharging into a percolation area at elevation ~~20~~ 19 MSL in the northwest corner of the site (Figure 7).

Page 62, the bulleted paragraph is revised as follows:

- The project would not significantly increase peak period storm water run off to a degree that would cause substantial flooding, erosion or siltation and therefore, no significant impacts are expected. (Less than Significant Impact)

Page 63, the following mitigation measure is inserted under the subheading, "Groundwater":

- Prior to recordation of the final map for the project and the issuance of the CDP (in order to be consistent with LCP Policy 4.3.31) the MPWMD shall verify through its Water Distribution Permit review process, to the satisfaction of the City that either (1) groundwater pumping needed for the project (at City-approved or Coastal Commission modified level, should that occur) shall not exceed present groundwater basin extractions by causing a commensurate amount of water pumping reduction; or (2) basin management and production enhancement techniques have been implemented which increase the safe yield of the Basin in an amount sufficient to satisfy the demand from this project.

Page 64, the following revision is made to the second bulleted item:

- Water use for the project shall not exceed 99 125 afy.

Page 64, the sixth bullet is revised as follows:

- To comply with the ~~California Water Works Standards~~ the requirements of State Health Regulations (Title 22 of the California Code of Regulations), the City's Health Officer, and the City Engineer, the applicant shall drill and develop a second well to provide adequate water supply. The second well should be located to minimize impact on the existing PCA well. The applicant should demonstrate compliance with the requirements of Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), ~~4012, 116530 4013~~ 116535 and ~~4019~~, Health and Safety Code.

Henrietta Stern

From: Laurens Silver [larrysilver@earthlink.net]
Sent: Wednesday, February 25, 2009 1:19 PM
To: Henrietta Stern
Cc: markeyka@co.monterey.ca.us
Subject: SNG-Cal Am Application for Water Distribution Permit

I would like to supplement the Sierra Club comments on the above application by asking that the District include in the record of this proceeding Attachment 1 to the 2008 Watermaster Report. This is a chart entitled Seaside Groundwater Basin Watermaster, Reported Quarterly and Annual Water Production from the Seaside Groundwater Basin For all Producers Included in the Seaside Basin Adjudication--Water Year 2008. This report was issued by the Water Master in November 2008 and is found on the Watermaster website.

This chart indicates that total production by the alternative producers for the water year 2008 was 1114 AF. The total allocated to the alternative producers in the Adjudication was 1347 AF. There are 233 AF remaining that are available under the Decision for the alternative producers.. Alternative Producer Calabrese has an allocation of 14 AF that it did not use. Sand City has 9 AF that it did not use. Alternative Producer Pasadera did not use 114 AF of its allocation. Bishop did not use 20 AF of its allocation. York School did not use 10 AF of its allocation. Laguna Seca County Park did not use 8 AF of its allocation.. SNG used only 4.3 AF. of its 148 AF allocation.

According to the chart the City of Seaside used 593 AF for its golf course. This was 53 acre feet in excess of its allotted allocation as an alternative producer. Its allotted allocation is 540 AF.

As the Sierra Club urged in its letter, the District has an obligation to analyze the cumulative impacts of of closely related past, present and foreseeable future projects in the Seaside Basin. These foreseeable future projects include use of those water rights discussed above awarded in the Adjudication that have not yet been exercised.

Larry Silver, Counsel to the Sierra Club

ATTACHMENT 1

GROUNDWATER EXTRACTIONS

Seaside Groundwater Basin Watermaster
Reported Quarterly and Annual Water Production (in Acre Feet) From the Seaside Groundwater Basin
For All Producers Included in the Seaside Basin Adjudication – Water Year 2008
All Values in Acre-Feet (AF)

| Producer | Category of Producer | Quarters | | | | Annual Reported Total | Base Operating Yield Allocation | Carryover Credit from Water Year 2007 (See Footnote 7) | Carryover Credit to Water Year 2009 (See Footnote 7) |
|--|----------------------|----------------|--------------|----------------|----------------|-----------------------|---------------------------------|--|--|
| | | Oct-Dec 2007 | Jan-Mar 2008 | Apr-Jun 2008 | Jul-Sep 2008 | | | | |
| Coastal Subareas | | | | | | | | | |
| CAW (Coastal Subareas) | Standard | 1,049.9 | 224.8 | 721.5 | 1,333.6 | 3,329.8 | 3,504.2 | 0.0 | 0.0 |
| Seaside (Municipal) | Standard | 76.0 | 53.7 | 92.0 | 72.5 | 294.2 | 287.4 | 0.0 | 0.0 |
| Granite Rock Company | Standard | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 27.1 | 54.2 | 81.3 |
| DBO Development No. 27 | Standard | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 49.3 | 98.6 | 147.8 |
| City of Seaside (Golf Courses) | Alternative | 87.2 | 36.2 | 200.7 | 268.9 | 593.0 | 540.0 | N/A | N/A |
| Sand City | Alternative | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 9.0 | N/A | N/A |
| Security National Guaranty | Alternative | 2.0 | 2.1 | 0.2 | 0.0 | 4.3 | 149.0 | N/A | N/A |
| M.E. Calabrese 1987 Trust | Alternative | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 14.0 | N/A | N/A |
| Alderwoods Group (Mission Memorial Park) | Alternative | 4.2 | 1.4 | 5.4 | 9.8 | 20.8 | 31.0 | N/A | N/A |
| Coastal Subarea Totals | | 1,219.3 | 318.2 | 1,019.8 | 1,684.8 | 4,242.1 | 4,611.0 | N/A | N/A |
| Laguna Seca Subareas | | | | | | | | | |
| CAW (Inland Subareas) | Standard | 113.1 | 88.4 | 156.2 | 175.4 | 533.1 | 345.0 | 0.0 | N/A |
| Pasadena Country Club | Alternative | 11.2 | 0.1 | 64.9 | 65.2 | 141.4 | 251.0 | N/A | N/A |
| Laguna Seca/Bishop | Alternative | 31.7 | 9.3 | 122.8 | 136.4 | 300.2 | 320.0 | N/A | N/A |
| York School | Alternative | 4.0 | 2.9 | 7.0 | 8.1 | 22.0 | 32.0 | N/A | N/A |
| Laguna Seca Park (County) | Alternative | 7.3 | 3.1 | 9.4 | 13.4 | 33.2 | 41.0 | N/A | N/A |
| Laguna Seca Subarea Totals | | 167.3 | 103.8 | 360.3 | 398.5 | 1,029.9 | 989.0 | N/A | N/A |
| Seaside Basin Production Totals = | | | | | | 5,272.0 | 5,600.0 | N/A | N/A |
| Total Production by Alternative Producers = | | | | | | 1,114.9 | | | |
| Total Production by Standard Producers = | | | | | | 4,157.1 | | | |

Notes:

- The water year begins October 1 and ends September 30 of the following calendar year. For example, WY 2008 began on October 1, 2007, and will end on September 30, 2008.
- All values are rounded to the nearest tenth of an acre-foot. Where required, reported data were converted to acre-feet utilizing the relationship: 325,851 gallons = 1 acre-foot.
- "Operating Yield" values based on Seaside Basin Adjudication decision as amended, signed February 9, 2007 (Monterey County Superior Court Case No. M66343).
- Any minor discrepancies in totals are attributable to rounding.
- Carryover Credits are as defined in the amended Seaside Basin Adjudication decision, and apply only to Standard Producers. Since the Storage Capacity of the Basin has not yet been established (this will be done in early 2009), it is assumed that the Carryover Credits shown above will not exceed any of the Standard Producer's Storage Allocations, and are therefore applicable toward Water Year 2009.
- The Base Operating Yield Allocations are derived directly from the Decision, and do not include any Carryover Credits from the previous Water Year. Carryover credits are included in determining whether or not a Standard Producer exceeded its Operating Yield allocation.
- The carryover credit shown for CAW is the combined total carryover credit for CAW's Coastal Subarea and Inland Subarea. CAW's total carryover credit is shown with the Coastal Subarea only, since the Seaside Basin Adjudication decision as amended does not differentiate between the Coastal and Inland Subareas in determining a producer's carryover credit amount.
- CAW = California American Water.

Henrietta Stern

From: janetlnca@comcast.net
Sent: Tuesday, February 24, 2009 9:17 PM
To: Henrietta Stern
Subject: Defer Decision on Monterey Bay Shores Resort

Chair Kristi Markey

Dear Chair Markey,

I am writing to request that the MPWMD Board defer its decision to amend the Cal-Am service area to provide service to the Monterey Bay Shores Resort. Just like you, I too have concerns about the Monterey Bay Shores Resort and its impacts on our local environment. Given that there are new and existing circumstances that have not been appropriately analyzed by a Subsequent EIR, but instead have been inappropriately and inadequately addressed by an Addendum to the EIR, the MPWMD Board cannot make a decision at this point because the potentially significant impacts to the environment resulting from substantial changes in the circumstances under which the project is undertaken have not been appropriately analyzed.

Thank you for actions to ensure protection of our coast~

Sincerely,
Janet Lewis
1241 Darwin St.
Seaside, CA 93955

cc:
Henrietta Stern

*emails also sent to Doyle
Lehman
Potter*

Henrietta Stern

From: pegoss@gmail.com
Sent: Tuesday, February 24, 2009 9:05 PM
To: Henrietta Stern
Subject: Defer Decision on Monterey Bay Shores Resort

Chair Kristi Markey

Dear Chair Markey,

I am writing to request that the MPWMD Board defer its decision to amend the Cal-Am service area to provide service to the Monterey Bay Shores Resort. Just like you, I too have concerns about the Monterey Bay Shores Resort and its impacts on our local environment. Given that there are new and existing circumstances that have not been appropriately analyzed by a Subsequent EIR, but instead have been inappropriately and inadequately addressed by an Addendum to the EIR, the MPWMD Board cannot make a decision at this point because the potentially significant impacts to the environment resulting from substantial changes in the circumstances under which the project is undertaken have not been appropriately analyzed.

Thank you for actions to ensure protection of our coast~

Sincerely,
paul goss
6641 kim ann lane
salinas, CA 93907

cc:
Henrietta Stern

*Emails also sent to Doyle
Lehman
Potter*

Anthony L. Lombardo
Jeffery R. Gilles

Dennis C. Beougher
Patrick S.M. Casey
Sheri L. Damon
E. Soren Diaz
J. Kenneth Gorman
Koren R. McWilliams
Paul Rovella
Bradley W. Sullivan
James W. Sullivan
Kelly McCarthy Sutherland

Virginia A. Hines
Of Counsel

Amy Purchase Reid
Of Counsel



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831-754-2011 (FAX)
www.lomgil.com

225 Sixth Street
Hollister, CA 95023
831-630-9444

February 23, 2009

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FEB 24 2009

MPWMD

Henrietta Stern
Monterey Peninsula Water Management District
5 Harris Court, Bldg G
PO Box 85
Monterey, CA 93942

RE: Water Distribution System Permit (Cal Am and SNG)

Dear Henrietta:

I am in receipt of the MPWMD staff report prepared for the above-referenced application for water distribution permit. In an abundance of caution, I enclose two background documents prepared by the Seaside Water Master to supplement the staff's record relative to issues related to the Seaside Basin and in particular seawater intrusion.

The first is the Water Master's annual report to the Court and the supplemental report to the Court reporting on issues related to the ongoing management and monitoring of the Seaside Basin. In particular, the Water Master includes explanation about why salt water intrusion is not occurring in the Seaside Basin at this time.

Second, I enclose the Seawater Intrusion Response Plan which identifies the ameliorative steps the Water Master will take in the instance the monitoring wells begin to detect salt water intrusion. This document was adopted by the Seaside Water Master at its February 4, 2009 meeting.

Thank you for considering these part of the MPWMD record on the above-referenced application.

Sincerely,
Lombardo & Gilles


Sheri L. Damon

SLD:slr

Attachments available on
watermaster website
www.seasidebasinwatermaster.org

Carmel Valley Association
P.O. Box 157, Carmel Valley, California 93924
www.carmelvalleyassociation.org



Since 1949

February 23, 2009

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FEB 25 2009

MPWMD

Directors
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93949-0085

RE: Monterey Bay Shores Ecoresort Water Distribution Permit

Dear Chair Markey and Members of the Board:

Although the proposed Monterey Bay Shores Ecoresort development may be required to draw water only from the Seaside Aquifer, and not use water from the Carmel River Basin, the net effect of the project's connection to the CalAm system will be to put additional demands on the Carmel River watershed and aquifer. Both the Carmel River system and the Seaside Aquifer are severely overdrafted. No new water is added to the Seaside Aquifer by this development. The threat to future service to existing CalAm customers -- with or without the project -- is manifest and unprecedented:

1. We are awaiting the outcome of the 95-10 Ruling and its accompanying draft Cease and Desist Order. It can be reasonably expected that further reductions in CalAm diversions from the Carmel River watershed will be required, and may be imposed at an early date.
2. No replacement water sources are in place, nor are any of the proposed plans for developing additional water on the immediate horizon -- with predictable start dates or known production capacities.
3. We are now in a second consecutive drought year, without a predictable water supply for the current (2008-9) or coming (2009-10) year.
4. Current CalAm customers may be facing immediate emergency restrictions on water use as a result of drought, mandated reduction in supplies, and lack of alternate water sources.

The agreements to provide water to the Monterey Bay Shores Ecoresort from offsite wells are likely to face additional legal challenges. But once a

commitment is made by the District to supply water, it will be nearly impossible to undo.

Therefore the Carmel Valley Association strongly recommends that the Monterey Peninsula Water Management District reject the application to amend the California American Water distribution system to serve Monterey Bay Shores Ecoresort until these issues are resolved.

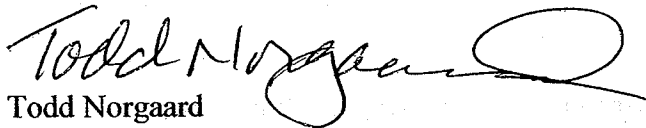
Further, The Carmel Valley Association recommends the Monterey Peninsula Water Management District consider imposing a temporary moratorium on additional new connections to the CalAm system until adequate water supplies become available.

We believe a "no" vote on this permit application would be in keeping with the District's goal to,

"Enhance and protect the water resources of the Carmel River and the Seaside Basin for the benefit of the environment and the community"

... and that a "yes" vote would seriously jeopardize this goal.

With best regards,



Todd Norgaard
Carmel Valley Association Water Committee

Home address and phone number:
7057 Valley Greens Circle
Carmel, CA 93923
831-620-1316

Anthony L. Lombardo
Jeffery R. Gilles

Dennis C. Beougher
Patrick S.M. Casey
Sheri L. Damon
E. Soren Diaz
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225 Sixth Street
Hollister, CA 95023
831-630-9444

February 17, 2009

RECEIVED

FEB 23 2009

MPWMD

Ralph Rubio, Chairman
Seaside Groundwater Basin Watermaster
2600 Garden Road, Suite 228
Monterey CA 93940-0810

RE: Response to California Environmental Law Project Letters
Dated February 5, 2009 and February 11, 2009

Dear Mr. Rubio:

This letter is submitted in response to Laurens H. Silver's letter dated February 5, 2009 directed to the Water Master regarding its review and approval of the SNG water distribution permit application to the Water Management District, and his follow up letter dated February 11, 2009.

Response to February 5, 2009 Letter

As pointed out in Mr. Silver's letter, the Amended Decision states that Alternative Production Allocation may not be transferred *for use* on any other property, but shall be limited to use on the respective property.¹ But Mr. Silver errs in asserting that SNG is proposing to *use* its water off-site. To the contrary, as the Water Master acknowledged, SNG proposes to use its Alternative Production Allocation on the SNG property for the proposed resort project. Thus, Mr. Silver's objection on this point has no merit.

Mr. Silver similarly ignores the other provisions of the Amended Decision which support the production from any location within the subarea of the Seaside Basin. He argues that the Amended Decision did not address the issue. Mr. Silver is again incorrect. See, e.g., the definitions section:

"the amount of Groundwater that a Producer ...may Produce from a subarea of the Seaside Basin...."²

Groundwater is all Water beneath the ground surface in the Seaside Basin....³

Producer means a Party possessing Base Water Rights;

¹ Amended Decision Section III B3(a), page 19:

² Amended Decision, Section III, A.1.:4-6

³ Amended Decision, Section IIIA.12.:14-16

Production Allocation is the amount of Groundwater that a Producer may Produce from a subarea of the Seaside Basin.....⁴

Each Producer is authorized to Produce its Production Allocation within the designated subarea⁵

“The Alternative Production Allocation may not be transferred for use on any other property....”⁶

All of these provisions support the proposal by SNG to allow Cal Am to pump SNG’s water inland (to minimize environmental impacts on the basis) and deliver it for use on SNG’s property for the resort project. Mr. Silver ignores the authority bestowed by the Amended Decision as well as the environmental benefits that this arrangement is designed to achieve.

Mr. Silver further ignores the powers of the Water Master to manage the Seaside basin, including its correlative pumping and, in particular, the authority to:

adopt a comprehensive monitoring and management plan;⁷

relocate authorized production locations;⁸

take any action to protect groundwater quality and reduce potential threats to contamination;⁹ and

take any other action to implement the Amended Decision.¹⁰

The Watermaster was well within its powers and duties to issue its decision on the water distribution permit application finding that SNG’s applications consistent with the Amended Decision.

Additionally, case law supports both the Watermaster’s decision and the Monterey Court’s physical solution to the Seaside Basin Adjudication decision, in that water rights in an adjudicated basin are correlative to one another. A long line of cases support the notion that overlying water rights situated over a “common strata of percolating water” may be exercised to take such quantity of water as may be reasonably necessary for the beneficial use upon his land or the reasonable proportion of such water, for use upon lands situated over the strata.¹¹ In other words, just as the Amended Decision emphasizes the location of use, so do the cases.

⁴ Amended Decision, Section IIIA27. Page 14:24-27

⁵ Amended Decision, Section IIIB2, Page 17-18

⁶ Amended Decision, Section IIIB3a., Page 20

⁷ Amended Decision, Section III L(3)(j)(i), Page 32

⁸ Amended Decision, Section III L(3)(j)(xxii), Page 39

⁹ Amended Decision, Section III L(3)(j)(xxiii), Page 39-40

¹⁰ Amended Decision, Section III L(3)(j)(xxiv), Page 40

¹¹ Katz v. Walkinshaw, 141 Cal. 116; Peabody v. Vallejo, 2 Cal. 2d 351

Mr. Silver cites several laws and cases which are irrelevant to this situation because none of the citations deal directly with an adjudicated basin. Mr. Silver also fails to correctly describe the SNG proposal, which is to use its allocation on its own property - - SNG is not converting it or delivering it *for use* on some other property. Accordingly, there is no requirement for SNG to convert the Alternative Allocation to a Standard Allocation.

The Water Master's decision is binding and final upon the Water Management District.

Response to February 11, 2009 Letter

Mr. Silver's February 11, 2009 letter is principally a response to the February 5, 2009 determination by the SWRCB that Order 95-10 "does not require Cal Am to make a one-for-one reduction" Previously, this had been one of Mr. Silver's most vigorous assertions and it has now been conclusively rejected by the SWRCB.

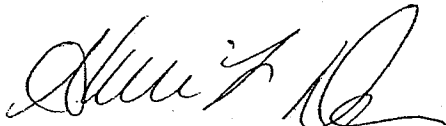
Mr. Silver thus again reverts to his standby argument that SNG's proposal is not allowed by the Amended Decision without a conversion to standard allocation. For the reasons specified above, Mr. Silver misinterprets the Amended Decision and mischaracterizes SNG's proposal. SNG's proposal does not "transmute" its right into a transferable interest in water but rather is simply a mechanism to ensure that an environmentally superior approach to pumping within the sub basin is employed. i.e., to minimize any potential for saltwater intrusion from pumping in the coastal area. It is ironic that the Sierra Club, an organization which claims to place a priority on environmental protection, is opposed to a measure that is scientifically recognized as an environmentally responsible approach to minimizing the potential for seawater intrusion on the Seaside Basin. This very issue was considered by the Court in the trial leading up to the Amended Decision.

The Water Master's decision was correct. It has no obligation to file anything with Judge Randall. If the Sierra Club believes otherwise, it, not the Water Master, has the burden to seek judicial relief in accordance with the appropriate procedures.

Thank you.

Sincerely,

LOMBARDO & GILLES, LLP



Sheri L. Damon

cc: Darby Fuerst