

EXHIBIT 14-D

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BEFORE THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

In the Matter of the California-American)	
Water Company Ryan Ranch Unit,)	FINDINGS, CONCLUSIONS
)	
Hearing On Insufficient Physical Supplies)	AND DECISION OF THE BOARD
In Accord with District Rule 40-B)	
_____)	

The Board of Directors (Board) of the Monterey Peninsula Water Management District (District or MPWMD) convened this administrative hearing pursuant to District Rule 40 B to determine whether the Ryan Ranch Water Distribution System (WDS or System) has sufficient physical supplies of water to meet demand, and/or whether modifications to System Capacity and/or Expansion Capacity Limits should be made.

Parties to the hearing included the District staff prosecution team, represented by its attorney, Frances M. Farina, California-American Water Company (Cal-Am), represented by its attorneys Carrie L. Gleeson, Lori W. Girard and Timothy J. Miller, Wilson Street Investors, LLC and Ryan Court Investors, LLC, represented by their attorney, Sheri L. Damon, and Community Hospital of the Monterey Peninsula (CHOMP), represented by its attorney, David C. Sweigert.

District General Counsel David C. Laredo assisted the Board in this proceeding.

The administrative hearing was convened on January 21, 2009 and was continued to February 18, 2009. Statements were received, sworn testimony was taken and exhibits were admitted into evidence. Post hearing briefs and summary statements of the Parties were allowed. Board deliberation was held on May 20, 2009.

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1 Based on the record, and for good cause, the Board makes the following Findings,
2 Conclusions and Decision.

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4 **BACKGROUND**

5 1. The District is an independent special district and holds power granted to it by
6 the state legislature. **EVIDENCE:** Statutes of 1977, Chapter 527, as amended, found at
7 West's Water Code Appendix, Sec. 118-1, *et. seq* (Water District Law).

8 2. The District regulates water distribution systems within its boundaries, adopts
9 regulations, establishes rules to protect public health and has the power to do any act necessary
10 to ensure sufficient water is available for present or future beneficial use of inhabitants within
11 the District. **EVIDENCE:** Water District Law, §118-363, §118-308, §118-326 (c), §118-325.

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13 **REGULATORY FRAMEWORK**

14 3. The District has established a permit system for operation of Water Distribution
15 Systems within its boundaries. **EVIDENCE:** MPWMD Rules and Regulations (Rules &
16 Regs), Regulation II, Rules 20 – 29.

17 4. Each Water Distribution System within the District is required to operate within
18 an established Expansion Capacity Limit and System Capacity Limit. **EVIDENCE:** MPWMD
19 Rules & Regs, Rule 20 and Rule 22.

20 5. The District defines the term Expansion Capacity Limit to mean “the maximum
21 number of connections beyond which a Water Distribution System is not authorized to
22 Expand.” **EVIDENCE:** MPWMD Rules & Regs, Rule 11.

23 6. The District defines the term System Capacity to mean “the amount of water in
24 gallons, cubic feet or Acre Feet that can be produced for delivery to a Water Distribution
25 System based upon the cumulative Sustained Yield of Wells adjusted for periodic lowering of
26 the water table and the projected yield of other Sources of Supply.” **EVIDENCE:** MPWMD
27 Rules & Regs, Rule 11.

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1 7. The MPWMD General Manager is required to monitor the physical ability of
2 Water Distribution Systems having more than ten connections to supply water within the
3 System Capacity and/or the Expansion Capacity for that System. **EVIDENCE:** MPWMD
4 Rules & Regs, Rule 40 B 1.

5 8. Where physical water supplies do not appear sufficient to support either the
6 System Capacity or the Expansion Capacity for that WDS, the General Manager shall rely on
7 credible information presented by a certified hydrogeologist, a registered geologist with a
8 specialty in hydrogeology, a certified engineering geologist with a specialty in hydrogeology, or
9 a registered civil engineer with a specialty in hydrogeology. **EVIDENCE:** MPWMD Rules &
10 Regs, Rule 40 B 1.

11 9. Based upon expert opinion, the General Manager is required to convene a hearing
12 before the District Board to review the System Capacity or the Expansion Capacity, or both, for
13 such WDS. The instant proceeding constitutes such a hearing. **EVIDENCE:** MPWMD Rules
14 & Regs, Rule 40 B 2.

15 10. The District provided Notice to Cal-Am that its Ryan Ranch WDS did not appear
16 to have sufficient water supplies to support its System Capacity. Notice of this proceeding was
17 provided to Cal-Am on September 19, 2008 and November 4, 2008. Notice to property owners
18 and tenants in the Ryan Ranch service area was provided on January 9, 2009. **EVIDENCE:**
19 Exhibits A, C, F-8, and F-10.

20 11. The purpose of this hearing is to determine whether or not physical water
21 supplies are sufficient to support either the System Capacity or the Expansion Capacity, or both,
22 for the Ryan Ranch WDS, and whether, and to what extent, modifications shall be made to
23 either the System Capacity or Expansion Capacity, or both, for that WDS. **EVIDENCE:**
24 MPWMD Rules & Regs, Rule 40 B 3.

25 12. The Board's determination is based upon substantial evidence, including credible
26 expert evidence. **EVIDENCE:** MPWMD Rules & Regs, Rule 40 B 3.

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1 **PRELIMINARY ISSUES**

2 13. Cal-Am and others argue this proceeding is not fair, and that the Board cannot be
3 impartial, because the District participates in matters before the California Public Utilities
4 Commission (CPUC) in which Cal-Am is also a party. Cal-Am cites circumstances where the
5 District filed a protest in CPUC proceedings, but the only way to fully participate in a CPUC
6 proceeding is by filing a protest. These assertions fail for lack of evidence that an unacceptable
7 probability of actual bias exists. **EVIDENCE:** No evidence to sustain the argument. *Nasha*
8 *LLC v. City of Los Angeles* (2004) 125 Cal. App.4th 470 citing *BreakZone Billiards v. City of*
9 *Torrance* (2000) 81 Cal. App.4th 1205.

10 14. Cal-Am and others also argue this proceeding is not fair because the prosecuting
11 attorney, Frances M. Farina, simultaneously served as an advisor to the Board on unrelated
12 matters, including but not limited to CPUC matters in which Cal-Am is involved. No evidence
13 was produced to show improper conduct. The presumption of impartiality was not refuted by
14 any evidence. Absent such evidence, there is no violation of due process for a prosecuting
15 attorney to simultaneously serve as an advisor to the Board on unrelated matters. **EVIDENCE:**
16 No evidence to sustain the argument. *Morongo Band of Mission Indians v. State Water*
17 *Resources Control Board* (2009) 45 Cal.4th 731, 88 Cal. Rptr.3d 610.

18 15. Cal-Am and others also argue this proceeding is not fair because the prosecuting
19 attorney, Frances M. Farina, serves in an "of counsel" role to the firm of De Lay & Laredo,
20 while a named partner of that firm, David C. Laredo, represents the District as General Counsel
21 and has been the legal advisor to the Board for this proceeding to provide general advice and
22 consultation to the Chair and Board. Frances M. Farina assisted District staff in this hearing as
23 an independent attorney, and had no contact or direction from District General Counsel. Ms.
24 Farina's office is located in Santa Barbara, while Mr. Laredo's office is located in Pacific
25 Grove. No evidence was produced to show Ms. Farina had access or used confidential
26 information related to this matter, or that Mr. Laredo exercised authority or control over Ms.
27 Farina. No evidence was shown that the ethical wall established to ensure separation of

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1 functions had been breached or was capable of being breached. **EVIDENCE:** Exhibit E;
2 Following the guidance of *Howitt v. Superior Court*, (1992) 3 Cal. App. 4th 1575, 5 Cal. Rptr.
3 2d 196 and *Nightlife Partners, Ltd. v. City of Beverly Hills*, (2003) 108 Cal. App. 4th 81, 133
4 Cal. Rptr. 2d. 234. No evidence to sustain the argument.

5 16. Cal-Am and others argue the District lacks regulatory authority over Cal-Am's
6 Ryan Ranch WDS because the CPUC has exclusive jurisdiction. However, the District Law
7 authorizes MPWMD to regulate water distributions systems, including those operated by Cal-
8 Am. **EVIDENCE:** Statutes of 1977, Chapter 527, as amended, found at West's Water Code
9 Appendix, Sec. 118-1, *et seq.*

10 17. Section 118-363 the District Law provides, "No person, owner, or operator shall
11 establish, extend, expand, or create a water distribution system unless and until the approval of
12 the board is first obtained in writing." The section also provides the Board may "adopt such
13 rules and regulations and establish such forms for such applications as are necessary and
14 proper." **EVIDENCE:** Statutes of 1977, Chapter 527, as amended, found at West's Water
15 Code Appendix, Sec. 118-363.

16 18. Cal-Am and others argue the District must complete an environmental impact
17 report (EIR) under the California Environmental Quality Act (CEQA) before it can make any
18 order pursuant to the MPWMD Rule 40 B hearing process. The District's action, however, is in
19 the nature of an enforcement action by a regulatory agency and qualifies for an exemption under
20 CEQA. **EVIDENCE:** CEQA Guidelines, section 15321.

21 19. CHOMP argues it has a vested right to proceed to construct additional buildings
22 on its Ryan Ranch property and that any interference in its planned development constitutes an
23 unconstitutional taking. CHOMP, however, lacks a building permit for its property and cannot
24 show that it has a vested right to complete its phased development. **EVIDENCE:** Exhibit 4,
25 Exhibits L, M and N. *Congregation Etz Chaim v. City of Los Angeles* (2004) 371 F.3d 1122,
26 1125 citing *Toigo v. Town of Ross* (1998) 70 Cal. App.4th 309, 321.

27 20. CHOMP argues District regulatory action regarding the Ryan Ranch WDS
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1 deprives it of all economically beneficial use and interferes with its investment-backed
2 expectations. CHOMP fails to present evidence of specific diminution in property values. To
3 the contrary, action under District Rule 40B has general application, is not aimed at any
4 individual landowner, and is taken to ensure sufficient water supplies are available to satisfy the
5 needs of current water users, including CHOMP's already-constructed office campus. Rule 40
6 B provides a rational response to water shortage and long-term water availability problems.

7 **EVIDENCE:** Exhibit 4; Exhibits L, M and N, *Penn Central Transp. Co. v. New York City*
8 (1978) 438 U.S. 104; *Kawaoka v. City of Arroyo Grande* (1994) 17 F.3d 1227, 1238, fn. 10;
9 *Swanson v. Marin Municipal Water District* (1976) 56 Cal. App.3d 512

10 21. CHOMP requests special consideration, perhaps in the nature of a special
11 allocation of Ryan Ranch WDS System Capacity, and points to the process enabled by District
12 Ordinance No. 87. **EVIDENCE:** Exhibits 4 and 13, Policy Statement by David C. Sweigert.

13 22. The allocation of water is established by ordinance, as an exercise of District
14 legislative discretion, and a discrete allocation of water cannot properly be created as a result of
15 a quasi-judicial administrative proceeding such as this hearing. **EVIDENCE:** Water District
16 Law; MPWMD Rules & Regs, District Ordinance No. 87.

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18 **RYAN RANCH WDS SUPPLY ISSUES**

19 23. The Ryan Ranch WDS was formerly known as the Ryan Ranch Mutual Water
20 Company. The term Ryan Ranch WDS as used in these findings refers to both the Ryan Ranch
21 Mutual Water Company and its later operation as by Cal-Am as the Ryan Ranch WDS.
22 **EVIDENCE:** Exhibits F-6 and Exhibit F-7; Testimony of Darby W. Fuerst.

23 24. Cal-Am holds a District permit to operate the Ryan Ranch WDS, and operates
24 that WDS as a separate unit, distinct from Cal-Am's main system. **EVIDENCE:** Exhibits F-6
25 and Exhibit F-7; Testimony of Darby W. Fuerst.

26 25. When the Ryan Ranch WDS was formed on December 13, 1982, the District
27 approved its operation and granted it a System Capacity of 60 Acre Feet/Year (AFY). The

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1 WDS was to receive its water supply from three (3) wells. **EVIDENCE:** Exhibit F-1;
2 Testimony of Darby W. Fuerst.

3 26. The District amended the Ryan Ranch WDS permit on September 24, 1984. The
4 permitted System Capacity was increased to 100.5 AFY. The Ryan Ranch WDS was required
5 to develop two (2) additional production wells. **EVIDENCE:** Exhibit F-1; Testimony of Darby
6 W. Fuerst.

7 27. The District further amended the Ryan Ranch WDS permit on April 10, 1989.
8 The permitted System Capacity was increased to 175 AFY. The WDS was required to have
9 five (5) production wells designed to deliver 250 gallons per minute (GPM). **EVIDENCE:**
10 Exhibits F-1 and F-5; Testimony of Darby W. Fuerst.

11 28. At present, the Ryan Ranch WDS has only two (2) operational production wells.
12 **EVIDENCE:** Exhibits F-1; Testimony of Darby W. Fuerst; Testimony of Joseph W. Oliver.

13 29. The current Ryan Ranch WDS permit limits water deliveries though any
14 interconnection between the main Cal-Am service area and the Ryan Ranch WDS area.
15 Transfers of water through this interconnection are limited to emergency use, and must be
16 metered and reported to the District within one week of occurrence. **EVIDENCE:** Exhibit F-6.

17 30. Water demand requirements of Ryan Ranch WDS users are required to be met
18 solely by Ryan Ranch WDS production facilities. As such, it is "stand-alone" water system
19 served by separate and distinct supplies and not reliant upon Cal-Am's main Monterey water
20 system. **EVIDENCE:** Exhibits F-6, F-7, and G-10; Testimony of Darby W. Fuerst.

21 31. The current Ryan Ranch WDS System Capacity limits production to 175 AFY.
22 **EVIDENCE:** Exhibit F-6.

23 32. The current Ryan Ranch WDS Expansion Capacity limits the system to 190
24 connections. **EVIDENCE:** Exhibit F-6.

25 33. Joseph W. Oliver, a certified hydrogeologist with requisite credentials under Rule
26 40 B, provided testimony on the System Capacity of the Ryan Ranch WDS and the history of its
27 production wells. **EVIDENCE:** Exhibits G-2, G-7, and G-11; Testimony of Joseph W. Oliver.

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1 34. Aside from Joseph W. Oliver, no other witness provided testimony or
2 declarations holding credentials as a certified hydrogeologist, a registered geologist with a
3 specialty in hydrogeology, a certified engineering geologist with a specialty in hydrogeology, or
4 a registered civil engineer with a specialty in hydrogeology in this proceeding. **EVIDENCE:**
5 Entire Hearing Record.

6 35. Cal-Am reports show declining capacity in the Ryan Ranch WDS wells.
7 **EVIDENCE:** Exhibits G-4 and G-9; Testimony of Joseph W. Oliver.

8 36. Testimony of John Kilpatrick, a senior planning engineer for Cal-Am, before the
9 CPUC in General Rate Case Application 08-01-027, showed the Ryan Ranch WDS total well
10 capacity to be 101 GPM. **EVIDENCE:** Exhibit J.

11 37. Annual production for the Ryan Ranch WDS has varied from 26 AFY to 91 AFY
12 during the period 1990 to 2008; annual production in the most recent reporting year, Water
13 Year 2008, was 82 AFY. **EVIDENCE:** Exhibit G-5; Testimony of Joseph W. Oliver.

14 38. The existing well production capacity of the Ryan Ranch WDS, with both
15 primary wells in operation, is 101 GPM. A firm operating capacity of 101 GPM equates to an
16 annual production volume of 72 AFY. **EVIDENCE:** Exhibits G-1 and G-11; Testimony of
17 Joseph W. Oliver.

18 39. The Ryan Ranch WDS has an existing Maximum Day Demand of 115 GPM, a
19 permitted Average Day Demand of 108 GPM, and a permitted Maximum Day Demand of 244
20 GPM. **EVIDENCE:** Exhibit G-11; Testimony of Joseph W. Oliver.

21 40. The existing production capacity of the Ryan Ranch WDS of 101 GPM is
22 sufficient to meet an existing Average Day Demand of only 51 GPM. **EVIDENCE:** Exhibit
23 G-11; Testimony of Joseph W. Oliver.

24 41. The existing well production capacity of the Ryan Ranch WDS of 101 GPM is
25 not sufficient to meet existing Maximum Day Demand (115 GPM). **EVIDENCE:** Exhibit G-
26 11; Testimony of Joseph W. Oliver.

27 42. The existing well production capacity of the Ryan Ranch WDS of 101 GPM is

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1 not sufficient to meet permitted Average Day Demand (108 GPM). **EVIDENCE:** Exhibit G-
2 11; Testimony of Joseph W. Oliver.

3 43. The existing well production capacity of the Ryan Ranch WDS of 101 GPM is
4 not sufficient to meet permitted Maximum Day Demand (244 GPM). **EVIDENCE:** Exhibit G-
5 11; Testimony of Joseph W. Oliver.

6 44. Cal-Am has not been able to produce sufficient water from its Ryan Ranch WDS
7 sources of supply, and has had to transfer water from its main service area to the Ryan Ranch
8 WDS during six (6) reporting years during the period from Water Year 2003 to Water Year
9 2008. **EVIDENCE:** Exhibit G-5; Testimony of Joseph W. Oliver.

10 45. Cal-Am has raised questions about the adequacy of long-term water production
11 facilities at its Ryan Ranch WDS, is in the process of identifying other well sites and conducting
12 ground water studies to develop future water supply reliability, but has had limited success in
13 increasing long-term water production for Ryan Ranch WDS to date. **EVIDENCE:** Exhibit,
14 F-13, G-1 and G-10; Testimony of Joseph W. Oliver; Testimony of Darby W. Fuerst.

15 46. Ryan Ranch WDS does not comply with Monterey County permit conditions
16 because the system relies on supplemental domestic water supplied from Carmel Valley.
17 **EVIDENCE:** Exhibit F-12.

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19 **CONCLUSIONS**

20 47. The ability of the Ryan Ranch WDS to take on new consumers is limited by the
21 amount of its supply. When demand reaches this limit, it has no right to take on new
22 consumers. *Butte Co. W.U. Assn. v. Railroad Com.* (1921) 185 Cal. 218.

23 48. The District may restrict new connections to the Ryan Ranch WDS to ensure the
24 system does not exceed the existing safe yield of its water supply, and continue the restrictions
25 until the water supply is augmented.

26 49. Substantial evidence, including credible expert analysis, establishes the physical
27 water supply available to the Ryan Ranch WDS is not sufficient to meet either the permitted

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1 System Capacity or Maximum Day conditions.

2 50. Since the Ryan Ranch WDS wells are no longer capable of producing water at
3 the rates required in the MPWMD permit, or to meet Maximum Day conditions, the System
4 Capacity must be adjusted downward to reflect current production capacity.

5 51. The System Capacity for the Ryan Ranch WDS should be limited to 72 AFY.
6 This is consistent with the firm well production capacity of 101 GPM that is available to that
7 system.

8 52. The District shall not accept an application for a water permit to expand water
9 use in the Ryan Ranch WDS service area until Cal-Am develops additional well production
10 capacity to sustain a higher System Capacity and has its System Capacity modified.

11 53. Upon development of additional well production capacity, or based upon credible
12 expert analysis that the Ryan Ranch WDS can sustain operations in excess of the System
13 Capacity limit set by this order, Cal-Am may apply for amendment of its Ryan Ranch WDS
14 System Capacity. The Board shall at that time set an amended System Capacity for the Water
15 Distribution System, based upon such credible expert analysis in accord with its Rule 40 B 4.

16 54. Any decision to create an exception to the Ryan Ranch WDS capacity limits set
17 by this decision for CHOMP or others, similar to the water allocation set by District Ordinance
18 No. 87, is not limited by this decision. Such an exception could result from an exercise of
19 legislative prerogative beyond the scope of this proceeding.

20 55. The decision of the board is subject to judicial review within ninety (90) days of
21 its adoption pursuant to the provisions of the Code of Civil Procedure, section 1094.6, and in
22 accord with District Rule 16.

23 **ORDER**

24 Based on the record, and for good cause, the Board makes the following Order:

- 25 1. Physical water supplies are not sufficient to support the System Capacity for the
26 Ryan Ranch WDS.
- 27 2. Modification of the System Capacity for the Ryan Ranch WDS is required.

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3. The System Capacity for the Ryan Ranch WDS shall be limited to 72 AFY.

4. The District shall not accept an application for a water permit to expand water use in the Ryan Ranch WDS service area until its System Capacity is further modified.

5. Cal-Am may apply for, and the District may further amend, the Ryan Ranch WDS System Capacity based upon credible expert analysis in accord with Rule 40 B 4.

On motion by Director Lehman, and second by Director Doyle, the foregoing Findings, Conclusions and Decision is adopted upon this 15th day of June, 2009, by the following vote:

AYES: Directors Brower, Doyle, Lehman and Markey

NAYS: Director Pendergrass

ABSENT: Directors Potter and Edwards

I, Darby W. Fuerst, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing Findings, Conclusions and Decision were duly adopted on the 15th day of June 2009.

Witness my hand and seal of the Board of Directors this 18th day of June 2009.


Darby W. Fuerst, Secretary to the Board

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