

EXHIBIT XX-A

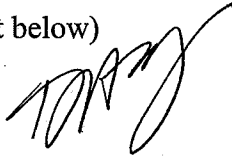
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

MEMORANDUM

Date: August 18, 2006 (revised September 14, 2006)

To: MPWMD Staff (see distribution list below)

From: David A. Berger, General Manager



**RE: WATER DISTRIBUTION SYSTEM MEMORANDUM #3 – PROTOCOL FOR APPLICATIONS AND REQUESTS INVOLVING WELLS IN CARMEL VALLEY ALLUVIAL AQUIFER**

The revised Implementation Guidelines for the MPWMD Rules and Regulations governing Water Distribution Systems (WDS) are currently being prepared. Due to questions about the protocol to address wells in the Carmel Valley Alluvial Aquifer (CVAA), this memorandum serves as written guidance on this subject until the revised Implementation Guidelines are completed. Questions about the CVAA protocol stem from letters to MPWMD from the California Department of Fish & Game (CDFG) and the National Marine Fisheries Service (NMFS or NOAA Fisheries) asserting that additional extractions from the CVAA should not be allowed and that a full California Environmental Quality Act (CEQA) review is required before any decision to approve wells in the CVAA. This memorandum is based on discussions with General Counsel in August 2006, and the August 15, 2006 memorandum from Counsel shown as **Attachment 1**.

The following paragraphs provide specific guidance to MPWMD staff in processing various types of WDS applications and requests that involve wells in the CVAA.

**General Guidance (Applicable to All Situations)**

A well is first determined to be in the CVAA based on the plan view maps available at the District office pursuant to Rule 11. Current Implementation Guidelines allow staff to determine that a well is not in the CVAA based on the well log, hydrogeologic data, and/or field inspection of the well site. This determination may be made by the District's Hydrogeologist/Water Resources Division (WRD) Manager in the Pre-Application phase, and would be included in the Pre-Application Review letter to the applicant. The District's Hydrogeologist/WRD Manager also has the authority to amend the boundaries of the CVAA on District maps based on scientific evidence and a signed, dated, written rationale.

If the District staff believes the well is an alluvial well, or if there is a question about the alluvial characteristics of the well in the Pre-Application review, the District presumption is that the well is an alluvial well, absent substantial evidence to the contrary as demonstrated by a qualified consultant retained by the applicant. The District's Hydrogeologist/WRD Manager may concur or disagree with the applicant consultant's recommendation with a signed, dated, written

determination, including a rationale if the District disagrees with the applicant consultant's recommendation. The District's hydrogeology consultant may assist District staff in this review.

The terms "**actual historical use**" or "**historical baseline**" is hereby defined as the average of the past 10 years of metered water well production data and/or metered California American Water (Cal-Am) water records, depending on the situation. If 10 years are not available, the average of the available years of data shall be used. The use of a water year (defined as October 1 through September 30 of the following year) is preferred if data are available in this format. Use of a 10-year average is based on MPWMD Rule 40-A-4 as well as consistency with the State Water Resources Control Board (SWRCB) protocol used in Order 95-10. Given that well production reports may be prone to errors due to water meter reporting inaccuracies, District staff may conduct a field inspection of the well, meter and surroundings, and potentially correct readings if there is reasonable cause for such action. District staff may discuss the water production or use history with the property owner as part of the assessment.

The District will serve as the CEQA Responsible Agency for any development project for which discretionary approval is needed by a member jurisdiction (City or County); that jurisdiction will serve as the CEQA Lead agency. Thus, the District will rely on, and provide input to, the environmental documentation prepared by the Lead Agency. A specific case may warrant an exception to this protocol if the District determines the Lead Agency's environmental documentation does not adequately address water resources and related topics within the District's authority.

For any WDS application for which the District is the CEQA Lead Agency, there will be no CEQA exemptions for any new or amended WDS application for well(s) in the CVAA pursuant to CEQA section 15300.2. Thus, an Initial Study will be performed for all WDS applications in the CVAA. The Initial Study will be circulated for 30 days and noticed through the State Clearinghouse as well as local entities.

As described in Attachment 2, a key concern of resource agencies is the cumulative impacts of the combined effects of CVAA extractions by Cal-Am and non-Cal-Am wells. Thus, for all WDS applications and requests for wells in the CVAA described below, the water use history of Cal-Am and non-Cal-Am water use will be considered, as applicable.

The following direction recognizes that there may be exceptions or unusual circumstances which result in a different protocol for permit processing or responding to a WDS request. Any deviation must be approved by the General Manager in consultation with District General Counsel.

As part of the WDS application process, determinations about permit processing protocol are put in writing for each application as a determination by the General Manager. Such staff determinations are subject to appeal to the MPWMD Board pursuant to Rule 70.

### **Application for New Alluvial Well/WDS**

Based on an Initial Study, an Environmental Impact Report (EIR) will be prepared for any application to create a new WDS based on a new alluvial well that results in water extractions

from the CVAA greater than the historical baseline within the proposed WDS service area. A Mitigated Negative Declaration may be considered for a situation where a new well would result in total water use no greater than the historical baseline, considering combined Cal-Am and non-Cal-Am use before the proposed project and estimated water use after the project is operational.

### **Application for Amended WDS Based on Existing Alluvial Well**

Based on an Initial Study, an EIR will be prepared for any application to amend an existing WDS based on an existing alluvial well that results in water extractions from the CVAA greater than the historical baseline within the proposed WDS service area. A Mitigated Negative Declaration may be considered for a situation where amendments to the use of an existing well would result in total water use no greater than the historical baseline, considering combined Cal-Am and non-Cal-Am use before the proposed project and estimated water use after the project is operational.

### **Set System Limit Baseline for Previous Systems**

Rule 20 requires that the system limits for previous WDS be established pursuant to Rule 40-A. Rule 40-A-4 provides types of information that can be considered when setting the limit for an existing WDS for which system limits were not previously established, such as a "pre-existing multiple connection WDS" described in Rule 20-C-10. For such a situation, a system capacity (production limit) baseline may be set without CEQA review if the baseline does not exceed the actual historical use. Setting a baseline above actual historical use is possible, pursuant to Rule 40-A-4, but setting such a baseline would require CEQA review as a discretionary action that would allow more water as the baseline than was historically produced. As noted above, there would be no CEQA Exemption for such action.

### **Attachments**

1. August 15, 2006 Memorandum from General Counsel
2. June 7, 2006 and June 9, 2006 letters from CDFG and NMFS

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