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TO: David Berger

FROM: David C. Laredo

RE: SAND CITY DESALINATION WATER DISTRIBUTION SYSTEM

You have requested our review of Monterey Peninsula Water Management District (District) processes that should apply to any application for a Water Distribution System (WDS) permit for the City of Sand City's (City) proposed desalination project. This project is likely to include brackish water extraction wells, a reverse osmosis treatment plant, a brine disposal system, and other appurtenant facilities.

It is our understanding that production facilities for the proposed desalination project shall be owned by the City, but those facilities will be operated by a non-City entity – either California American Water (CAW) or another American Water subsidiary. Potable water produced by the desalination plant would thereafter be delivered via a single Connection to the CAW WDS with the intent that this water be wheeled through the CAW network for distribution and use to new CAW Connections within the City's corporate limits (excluding the Ghandour property). The capacity to produce desalinated water from the City-owned plant and WDS is intended to be reserved solely for delivery to new CAW Connections within the City.

An ancillary interim use of desalinated water, until such time as the production capacity for the City WDS is entirely used by new Connections, will enable CAW to serve its existing Connections with this alternate supply, thus reducing CAW's demand on its existing resource network.

Under this scenario, a series of questions have arisen.

What District Rule governs the proposed WDS Application?

As to the proposed City desalination plant, Rule 20 requires a Permit before any Person creates or establishes a Water Distribution System. This Rule explicitly states, "Desalination, reclamation or importation facilities located within the District are not exempt because the Source of Supply is considered to be the water emanating from a facility within the District."

As to the use of the CAW WDS to wheel water developed by the proposed City WDS, Rule 20 also provides, "An Owner or Operator of a Water Distribution System shall not modify, add to or change his/her Source of Supply, location of uses, change annual production or Connection limits, or expand the Service Area unless that person first files an application to do so with the

District and receives an amended creation/establishment Permit.” Desalinated water would constitute a Source of Supply for the CAW WDS as that term is defined to include “ground water, surface water, reclaimed water sources, or any other water resource where a person, owner or operator gains access by a water-gathering facility.” This applies to water produced from “any device or method, mechanical or otherwise.”

Existing District Rules adequately address each of the actions referenced above, and do not require amendment to either create the City WDS or amend the CAW WDS as contemplated by the proposed project. District staff may accept and process applications associated with the proposed desalination project at any time.

Who should the Applicant be for the City Desal Project?

The City should be the Applicant for the proposed desalination WDS. District Rules require that the term “Applicant” refer to the “person or persons responsible¹ for completing the requirements of an application.” Since the City proposes to own all facilities associated with the desalination project, the City is the appropriate Applicant for Rule 20 and 22 purposes. Rule 11 defines “Owner” as the “person to whom a water-gathering facility is assessed by the County Assessor, or, if not separately assessed, the person who owns the land upon which a water-gathering facility is located.” The fact that City intends to contract with CAW or any other party to operate the facility, and the fact that City intends to sell the product water and wheel it through the CAW system, is irrelevant to the District’s direct interaction with the City.

Will CAW need to amend its WDS Permit to accept the City project water?

Yes. District Rules 21C and 22E require issuance of a new and amended WDS permit if CAW proposes to add a new source of supply to its system. As noted above, desalinated water would constitute a Source of Supply for the CAW WDS.

What CEQA process should apply?

As to the City WDS application, the City has certified a Final Environmental Impact Report (FEIR) for this project. In relation to this project, the District is a Responsible Agency for CEQA purposes. In exercising its discretion on permits for the project, the District is required to ensure that the FEIR adequately addresses issues within its domain. Sections on hydrology and cumulative impacts must be examined to ensure these are adequate for District purposes. The FEIR should also ensure consistency with requirements set by the District’s rules. Should the FEIR not address District issues and concerns in full, additional documentation in accordance with CEQA may be required. Prior to final approval of the WDS, the District shall be required to follow the process and make findings for this project as required by CEQA Guidelines section 15096.

¹ See also Rule 11 definition for Responsible Party.

As to the CAW WDS application, the District will need assess whether any issues arise that are unique to the CAW system, and whether these are adequately addressed in the FEIR for the City project. Separate Notices of Determination should be posted for approvals related to the City WDS permit and the CAW WDS permit amendment.

What is the Service Area for the proposed WDS?

The City WDS Application should define a proposed Service Area in which the desalinated product water will be available and used. The proposed Service Area must be reviewed to determine consistency with representations made respecting the project to the State Water Resources Control Board (SWRCB)².

What System Capacity and Connection Limits Shall Apply?

As a condition upon the issuance of any WDS permit, the District is required by its Rule 22, among other matters, to establish a System Capacity and total number of Connections that may be served by that system.

Means to reserve desalinated water for CAW Connections within the City's boundaries

It is contemplated that the proposed project will include means by which the desalinated water is reserved for new CAW Connections within the City's boundaries. Without this step, the addition of a new Source of Supply to the CAW WDS might raise issues relating to amendment of the CAW WDS Allocation system.

The City-owned desalination project presents a scenario that is quite dissimilar to that presented by the Canada Woods WDS. In Canada Woods the water distribution facilities, water right and land upon which the new connections are situated, are all owned by a single entity. Additionally, the Canada Woods WDS does not use the CAW WDS to wheel water. Likewise, the City-owned desalination project differs significantly from Quail Meadows where the overlying landowner was able to document conserved water which was then made available through the CAW WDS to that same property owner.

The project proponent may propose any feasible means by which the desalinated water is to be dedicated to specific properties. One method could be a bilateral contract between the City and CAW, with subsequent amendment to the CAW allocation. This approach may be problematic, however, given uncertainties surrounding CAW's other sources of supply and possible need to update the District's Allocation EIR. Another approach could be modeled upon the Carmel Area Water District/Pebble Beach Community Service District (CAWD/PBCSD) recycled water project model wherein the District enacted an ordinance to grant a Water Entitlement to the fiscal sponsor.

² See, e.g. CAW letter to Victoria A. Whitney, December 12, 2005.

Ordinance to Establish Water Entitlement

It would be possible to create a City-owned Water Entitlement that positively correlates to the yield of the desalination project (assumed to be 300 AFA). Such an entitlement would create and clarify the right to use water from that WDS. This process would appear to parallel the similar circumstance wherein District Ordinances 39 and 109 established the water entitlement for the exclusive benefit of Pebble Beach Company and two other fiscal sponsors that underwrote costs for the CAWD/PBCSD project. If a similar approach is followed, an ordinance would create the Water Entitlement, set terms and conditions for persons or entities eligible to benefit from the entitlement, and establish means by which Permits issued in reliance upon the entitlement can be tracked.

Conclusion

District staff can begin processing the City's Application to Create a WDS pursuant to District Rules 20, 21, 22 and 40 (Level 4). District staff should concurrently process an Application to Amend the CAW WDS pursuant to Rules 21C and 22E.

The District should ensure that its actions are consistent with, or properly and regularly distinguished from, approval conditions that may apply from the following:

- California Coastal Commission Coastal Development Permit
- SWRCB Orders, Decisions or communications pertaining to the proposed WDS
- Certified FEIR on City Desalination Project from City
- Agreement(s) and correspondence between City and CAW or other system operators
- California Public Utility Commission orders related to CAW Service Area
- Seaside Basin Watermaster decisions
- State DHS and/or County Health permits