

From: Joe Donofrio [mailto:donofrio@mprpd.org]
Sent: Tuesday, December 07, 2010 5:32 PM
To: Andy Bell
Subject: FW: Questions regarding use of Regional Park District property

Andy-

As discussed, I reviewed our previous staff response to you with the Board last night to make sure they were in concurrence with it and to also confirm that the direction of the Board is that they are not interested in considering locating any future desal. facilities on their park and/or open space property. They confirmed that Tim's response was accurate and reflected their non-interest in considering this matter any further. Good luck with your and the Committee's efforts and sorry we couldn't be more helpful on this one.

Joe.

From: Tim Jensen
Sent: Thursday, December 02, 2010 3:17 PM
To: Joe Donofrio
Subject: FW: Questions regarding use of Regional Park District property

FYI. Your call.

From: Andy Bell [mailto:Andy@mpwmd.dst.ca.us]
Sent: Thursday, December 02, 2010 2:50 PM
To: Tim Jensen
Subject: RE: Questions regarding use of Regional Park District property

Tim—

I gave the MPWMD Board's Water Supply Planning Committee the following description of the reasons the properties would not be a good fit:

Monterey Peninsula Regional Park District

I spoke with Tim Jensen, Planning and Conservation Manager for Monterey Peninsula Regional Park District (Regional Park District). Mr. Jensen stated that for various reasons, it would be very unlikely that the properties could be used for desalination facilities. First, Regional Park District properties are not intended for non-open space projects or activities. Second, the parcels would need to be re-zoned to allow for desalination facilities, and the Regional Park District would oppose re-zoning. Third, the area is an abandoned landfill. There would presumably be water quality problems if any of the feedwater were obtained on or near the property, and there are stringent healthy and safety code requirements for construction on or in a former landfill.

(This is from a memo attached to a staff note for the November 16, 2010 Committee meeting, attached.)

The Committee members asked that staff re-contact you regarding use of the property. The following is from draft minutes of the meeting:

“The committee requested that staff pursue the following... (2) Contact the Monterey Peninsula Regional Park District again regarding use of Regional Park District land in Sand City as a potential desalination facility site.”

So, could you please give me something in writing that you believe will respond to the Committee members' request. The next meeting of the Committee is Wednesday Dec. 8 at 4:00 PM, so I would very much appreciate the information before them. Of course, you are welcome to attend the meeting. The agenda is attached. This topic is under Item 2. Thank you very much.

--Andy
658-5620

EXHIBIT 2-B

De LAY & LAREDO

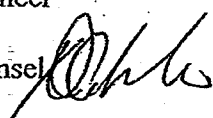
Attorneys at Law
606 Forest Avenue
Pacific Grove, California 93950

Telephone (831) 646-1502
Facsimile (831) 646-0377

Paul R. De Lay
David C. Laredo
Heidi A. Quinn
Fran Farina, of Counsel

June 22, 2006

TO: Andrew M. Bell, District Engineer

FROM: David C. Laredo, District Counsel 

RE: Water Rights Relating to Sand City Desalination Projects

This memo provides an overview of water rights associated with desalination plants that may be proposed for the Sand City area, as requested by board members in relation to the MPWMD 2005-2006 Strategic Plan adopted on October 18, 2005.

The City of Sand City has developed a desalination concept that may include construction of a 300,000 gallon-per-day desalination project located in Sand City. The Sand City plan calls for desalination of brackish water derived from vertical well intakes from the Aromas Sands Formation, a groundwater formation that lies within the Coastal Subarea of the Seaside Basin.

The Monterey Peninsula Water Management District has developed a desalination concept that may include construction of a 7.5 million gallon-per-day desalination project also located in Sand City. The MPWMD plan calls for desalination of seawater derived either from coastal radial wells, or from more "offshore" horizontal (HDD) collector wells. While seawater does not derive from groundwater of the Seaside Basin, it is possible that water collected by the District intake could have an effect upon groundwater within the Coastal Subarea of the Seaside Basin¹.

The recent Seaside Basin Groundwater Adjudication of Judge Roger D. Randall in *California American Water v. City of Seaside, et al.*, Case M66343, imposed a "physical solution" aimed at eliminating over-drafting of native water from the Basin by Cal Am, the City of Seaside, and other original parties to the lawsuit. The decision adjudicated the relative priority of legal rights and allocated production amounts among the public and private entities that produce water from the Basin. The adjudication decision also addressed select issues pertaining to water rights for the City of Sand City desalination plan. That portion of the decision states, in part,

Sand City shall have the right to Produce Brackish Water from the brackish Groundwater aquifer portion of the Coastal Subarea of the Seaside Basin for

¹ Joe Oliver comments on the possible impact of an MPWMD District desalination plant upon a City of Sand City desalination plant, stating, "it is not likely, however, that the radial wells would increase the salinity at the Sand City Wells. See the discussion of water quality impacts on pages 8-37 of the Board Review Draft MPWMD EIR for a more detailed description." He adds, however, that the radial well configuration could cause an efficiency loss for the Sand City intake facilities.

the purpose of operating its proposed desalination plant, said Production being limited to the Aromas Sands Formation, so long as such Production does not cause a Material Injury. Upon receiving a complaint... the Watermaster may impose conditions on such Production of Brackish Water that are reasonably necessary to prevent such Material Injury.

Several of the terms set forth above are defined "terms of art." "Brackish Water" is defined to mean "water containing greater than 1,000 parts of chlorides to 1,000,000 parts of water." "Groundwater" means "all Water beneath the ground surface in the Seaside Basin, including Water from Natural Replenishment, Artificial Replenishment, Carryover, and Stored Water." "Material Injury" means a substantial adverse physical impact to the Seaside Basin or any particular Producer(s), including but not limited to: seawater intrusion, land subsidence, excessive pump lifts, and water quality degradation." "Water" includes "all forms of water."

The Seaside Basin Groundwater Adjudication decision explicitly addresses the occurrence of a Material Injury caused by Production of Brackish Water by the City of Sand City desalination plant affecting other groundwater producers.

The Adjudication decision does not allocate any production amount to the Monterey Peninsula Water Management District as it does not produce water from the Basin. The decision also does not confer any water right upon the Water Management District related to brackish water.

The Court retained and reserved jurisdiction to make supplemental orders upon the noticed motion of any party to provide further direction as may be necessary to interpret or enforce the adjudication decision.

Based upon the foregoing, it is clear that the City of Sand City has the right to Produce Brackish Water from the brackish portion of the Aromas Sands Formation. The Water Management District may not operate a production or intake facility that interferes with Sand City's water right without the permission (and/or compensation) of Sand City, and without approval of either the Watermaster Board or the Court. Wrongful interference would occur to the Sand City desalination plant if its water source suffered an increase in salinity, or if excessive pump lifts or other operational efficiencies were lost by reason of Water Management District desalination plant operations.

It is not certain that a District seawater desalination plant would interfere with operation of a City of Sand City brackish water desalination plant. If an adverse effect were to occur, its effect can be mitigated by a variety of methods, including but not limited to providing Sand City with an alternate supply of potable (desalted) water, providing Sand City with an alternate supply of brackish water for it to desalinate, or by making modifications to the District facilities to avoid those impacts.

It is important to note that any production of water deriving from the Seaside Groundwater Basin is subject to regulation of the Watermaster Board, and eventually the Court. The Seaside Basin Groundwater Adjudication decision does not limit production of seawater from sources other

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June 22, 2006
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than those beneath the ground surface in the Seaside Basin, and also does not operate to limit production of seawater that does not adversely effect upon the Seaside Basin water resources.

Please do not hesitate to contact me if you have any question regarding this memo.

Sincerely,

De LAY & LAREDO

David C. Laredo

MPWMD/2006/Desal Water Rights (Sand City) Memo 6-22-2006