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November 15, 2010

Item 14
Presented at 11/15/10
Board Meeting

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Via Email

Regina Doyle, Chair
and Members of the Board of Directors
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942-0085

Re: Comments on Item 14 on today's agenda: Proposed Ordinance

Dear Chair Doyle and Members of the Board:

This Office represents Save Our Carmel River, Patricia Bernardi, and The Open Monterey Project. Our clients have asked us to comment on Item 14 on tonight's agenda: "Consider First Reading of Ordinance No. 146, an Ordinance Suspending the Expiration Date for Water Credits for the Duration of Any Moratorium Limiting Their Use."

The staff report claims that tolling the expiration date for water credits would fall under the CEQA categorical exemption for "existing facilities." (CEQA Guidelines, § 15301.) That section is called a Class 1 exemption. It reads in pertinent part as follows:

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. . . . The key consideration is whether the project involves negligible or no expansion of an existing use.

Our clients assert that the District's CEQA conclusion is incorrect. On its face, the Class 1 exemption does not apply to water credits or tolling periods.

As the Sixth District Court of Appeal has held, "categorical exemptions must be carefully applied." (*Save Our Carmel River v. Monterey Peninsula Water Management District* (2006) 141 Cal.App.4th 677, 698.) In *Save Our Carmel River v. Monterey Peninsula Water Management District*, the Sixth District held that "on its face," the District's claimed CEQA Class 2 exemption for replacement of existing facilities "does not apply to a water credit transfer." (*Id.*, at p. 697.)

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The proposed ordinance fails to meet the claimed exemption's "key consideration": whether the project involves negligible or no expansion of an existing use. The point of the District's water credits is to allow a holder of a water credit to "cash it in" at a future date and thereby enable higher water use in the future at the site.

The District admits that there are water credits available to Quail Lodge (1.07 AFY), Presidio of Monterey (1.34 AFY) and Naval Postgraduate School (2.68 AFY). The exercise of those credits would mean an additional estimated 8.44 AFY of use, which would be a significant expansion of water use.

As the Sixth District has held, cumulative impacts of decisions relating to water credits must also be considered. (*Save Our Carmel River v. Monterey Peninsula Water Management District*, *supra*, 141 Cal.App.4th 677, at pp. 703-705.) Here, the District has not performed the required cumulative impacts investigation. Instead, the District claims that "full quantification of potential Water Credits available is not possible." That claim is inadequate under CEQA. The District must make a good faith effort to investigate how many water credits exist that would be affected by the proposed ordinance. The District's investigative methodology and its conclusions must be disclosed for public comment. The issue is actual water credits issued by the District, not "potential Water Credits available."

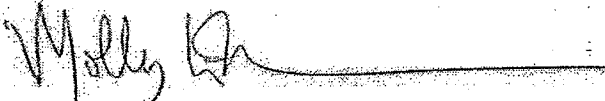
Our clients urge the District not to take further action on this ordinance until the District first complies with CEQA.

Please place this Office on the distribution list for all notification of any actions with regard to this proposed ordinance, including all notification under Public Resources Code section 21092.2.

Thank you for your consideration of these comments.

Very truly yours,

LAW OFFICES OF MICHAEL W. STAMP


Molly Erickson

cc: Darby Fuerst