

CAW WDS Amendment
Application #20241025CAW
Received October 25, 2024

Submitted by Applicant



RECEIVED

OCT 25 2024

MPWMD

**APPLICATION for a PERMIT to CREATE or AMEND a
WATER DISTRIBUTION SYSTEM or MOBILE WDS**

For detailed guidance, please visit the District website at:
<http://www.mpwmd.net/regulations/wells-water-systems/water-distribution-systems/>
(click on "2014 Implementation Guidelines").
For staff assistance, contact 831-658-5601 or skister@mpwmd.net or gabby@mpwmd.net

Form received on _____ by _____
Fee Received: _____ \$1,200 (Level 1 or 2); _____ \$3,000 (Level 3)
ID# WDS- _____

Please complete the table below (attach extra sheets as needed):

#	QUESTIONS	FILL IN ANSWERS BELOW
1	System Name	California American Water Distribution System (Carmel Valley)
2	Assessor's Parcel ## (list all)	If multiple parcel, identify APN for well/facility location and APN of parcels receiving water from WDS or Mobile WDS. 015-162-009, -017, -025, -026, -040, -048, -049
3	Physical Address or Location	Carmel Valley Road, east of the intersection of Carmel Valley Road and State Route 1 in unincorporated Monterey County (former West Course at Rancho Canada Golf Course)
4	Name of Applicant	California American Water Company/ Rancho Canada Venture (project proponent)
5	Mailing Address	(Street or PO) 511 Forest Lodge Rd., Suite 100/ 40 Tehama
6	City, State, Zip	Pacific Grove, CA 93950/ Carmel, CA 93923
7	Phone/fax/email:	831-751-2330/ cody@alombardolaw.com
8	Agent (if applicable)	(i.e., person who may receive paperwork on behalf of applicant/owner) Anthony Lombardo & Associates
9	Agent mailing address	144 West Gabilan St.
10	Agent City, State, Zip	Salinas, CA 93901
11	Agent phone/fax/email	831-751-2330/ cody@alombardolaw.com
12	Hydrogeologist (if applicable)	(e.g., licensed professional who has conducted well testing and evaluation) N/A
13	Hydro mailing address	N/A
14	Hydro City, State, Zip	N/A
15	Hydro phone/fax/email	N/A
16	Is this an amendment to an existing WDS?	YES or NO. If yes, identify previous MPWMD permit #, if any. # _____ Describe planned changes. YES
17	Is this a Mobile WDS?	YES or NO. If yes, go to Row 50 NO

* New APN's
being issued to
Assessor

18	Is this a water well?	YES or NO. If no, go to Row 21. YES
19	MCEHB ¹ Permit # and issuance date	(One for each well) W-4755, issued 4-14-88
20	DWR Well Completion Report # and date	(One for each well) #186291. 4-21-88
21	Within MPWRS ² ?	YES or NO. Consult with District staff if unsure; see definition in footnote. YES
22	>1,000 ft. MPWRS?	YES or NO. Consult with District staff if unsure. See Section 4.0 of 2014 Implementation Guidelines. NO
23	≤1,000 ft. MPWRS?	YES or NO. Consult with District staff if unsure. Staff will assess well log re: potential impacts; additional testing may be required. See Section 4.2 of 2014 Implementation Guidelines. YES
24	Seaside Basin source?	YES or NO. If yes, Adjudication documentation and/or approval from Watermaster are required. See Section 5.0 of 2014 Implementation Guidelines. NO
25	CV Alluvium source?	YES or NO. If yes, water rights documentation is required. See Section 6.0 of 2014 Implementation Guidelines. District staff will confirm if alluvial. YES
26	Fractured rock spring or seep?	YES or NO. If yes, state if onsite or offsite use, and if potable (drinking water) or non-potable use. See Section 7.0 of 2014 Implementation Guidelines.
27	River/tributary direct diversion?	YES or NO. If yes, water rights documentation is required. See Section 7.0 of 2014 Implementation Guidelines. Describe system.
28	Dam/reservoir?	YES or NO. If yes, water rights documentation and EIR is required. See Section 7.0 of 2014 Implementation Guidelines.
29	Desal plant?	YES or NO. If yes, describe facilities, annual production and recipients. EIR required. See Section 7.0 of 2014 Implementation Guidelines. NO
30	Reclamation plant?	YES or NO. If yes, describe facilities, annual production and recipients. EIR required. See Section 7.0 of 2014 Implementation Guidelines. NO
31	Rainwater harvest + offsite delivery?	YES or NO. If yes, describe. See Section 7.0 of 2014 Implementation Guidelines. NO
32	Other water systems?	YES or NO. Describe. See Section 7.0 of 2014 Implementation Guidelines. NO
33	Estimated production	Unit is acre-feet per year (AFY). See Section 2.9 of 2014 Implementation Guidelines. 60 AFY
34	Total acreage served	(Break out acreage of each parcel served) See attachment A11 for acreage breakdown by parcel
35	Type of water use?	(e.g., drinking water, irrigation only) Drinking Water for residential subdivision
36	Type of land use?	(e.g., residential, commercial, agriculture) Residential
37	New subdivision?	YES or NO. CEQA document from lead agency is required. YES
38	In CAW ³ service area?	YES or NO. YES
39	Active CAW service?	What is currently served by Cal-Am on the property (e.g., home or business)? N/A
40	What is Zoning?	MDR-D-S and HDR-D-S
41	Environmental	Describe CEQA documentation and Lead Agency, if applicable. Certified EIR

¹ MCEHB= Monterey County Environmental Health Bureau


² MPWRS= Monterey Peninsula Water Resource System (i.e., Carmel Valley Alluvial Aquifer, Carmel River/tributaries, and Seaside Basin)

³ CAW = California American Water Company

	information	
50	Is Mobile WDS source within MPWMD?	YES or NO. If yes, describe source and location. See Rows 21 - 32 for possibilities. N/A
51	Is water source outside MPWMD?	YES or NO. If yes, describe source and location. N/A
52	Source agency and approval	If outside MPWMD, identify source agency with authority. Attach written documentation that the source water may be exported to serve applicant. N/A
53	Describe intended use (long-term)	Mobile WDS may only be non-potable (e.g., irrigation, pools only) unless an emergency. N/A
54	# parcels served?	Use Request for Exemption form if service is to 3 or fewer parcels from a source outside MPWMD. 106, post subdivision
55	Emergency drinking water service?	YES or NO. If yes, describe situation.
60	Other relevant information or unique considerations?	Refer to Question #. Attach explanatory sheets as needed.
	ATTACHMENTS	
A1	Parcel Maps	
A2	MCEHB permit(s)	
A3	DWR well log(s)	
A4	Well registration forms	
A5	Well meter sign-offs	
A6	Grant deed	
A7	Water rights docs.	
A8	Environmental docs.	Certified EIR
A9	Mobile WDS approval	N/A
A10	Application fee (check)	
A11	Other	List of Parcels and acreage, explanation of amendment request

This Request for Exemption must be signed by the person who is identified in a recorded Deed as the owner of the parcel on which the well or other water producing facility is located. If multiple owners, at least two must sign.

Under penalty of perjury, I verify that the above information is accurate to the best of my knowledge and understanding.


Signature of Applicant/System Owner

Printed name of Applicant: SPENCER VARTANIAN

10/4/2024
Date

Signature of Applicant/System Owner

Printed name of Applicant: _____

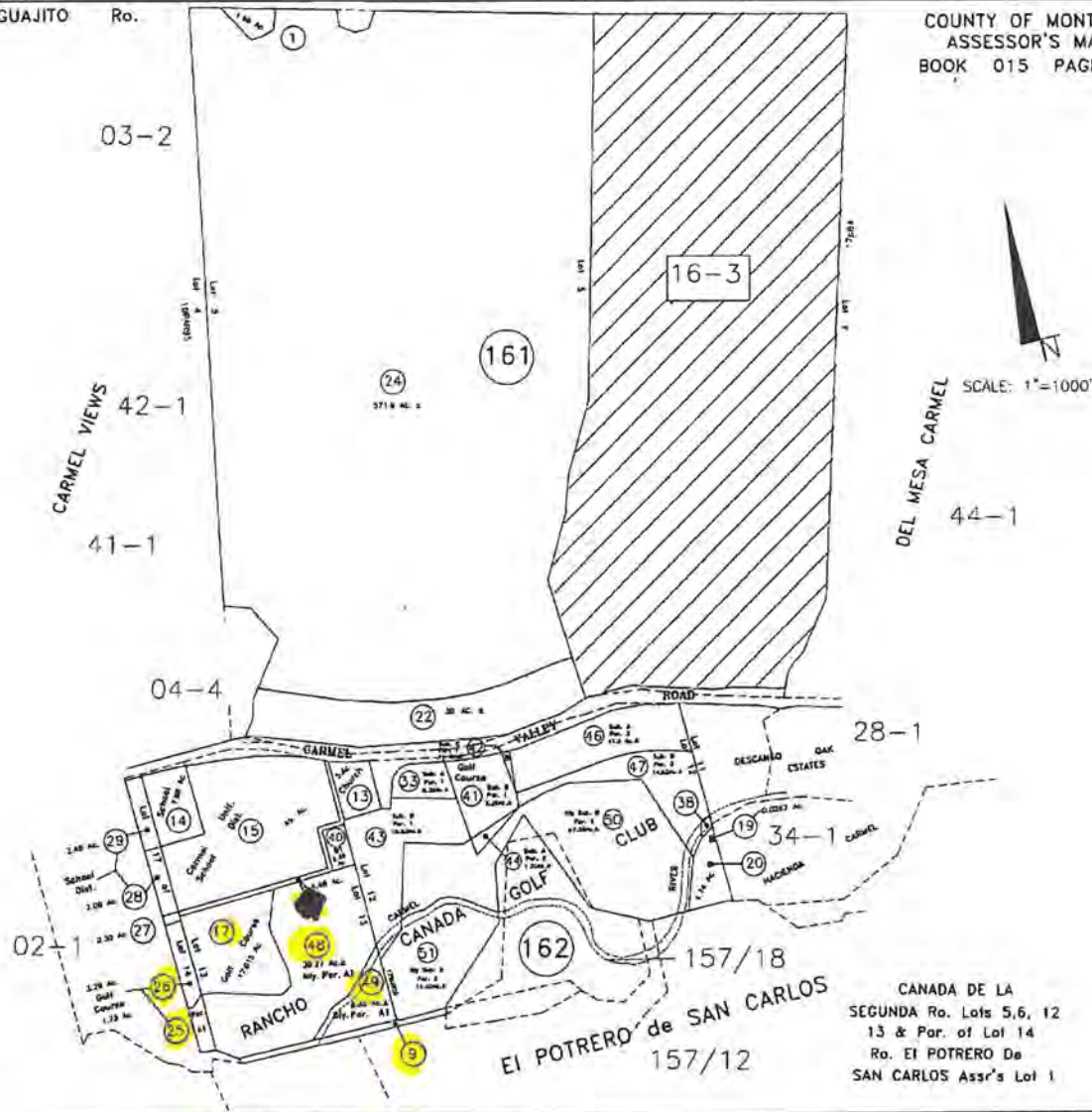
Date

A1

TAX CODE AREA—

AGUAJITO Ro.

COUNTY OF MONTEREY
ASSESSOR'S MAP
BOOK 015 PAGE 16-2



THIS MAP IS INTENDED TO BE USED FOR
PROPERTY TAX ASSESSMENT PURPOSES ONLY

CANADA DE LA
SEGUNDA Ro. Lots 5, 6, 12
13 & Por. of Lot 14
Ro. EL POTRERO De
SAN CARLOS Assr's Lot 1

EL POTRERO de SAN CARLOS
157/12
157/18

MONTEREY COUNTY

DEPARTMENT OF HEALTH

ROBERT J. MELTON, M.D., M.P.H., Director



PREVENTIVE MEDICINE

ENVIRONMENTAL HEALTH

MENTAL HEALTH

ALCOHOL AND DRUG PROGRAMS

☒ 1270 NATIVIDAD ROAD, SALINAS, CALIFORNIA 93906-3198 (408) 767 1001

☐ 1200 AGUAJITO ROAD, MONTEREY, CALIFORNIA 93940-4898

☐ 1180 BROADWAY, KING CITY, CALIFORNIA 93930 (408) 385-1291

☐ 1292 OLYMPIA AVENUE, SEASIDE, CALIFORNIA 93955 (408) 899-4271

PLEASE REPLY TO ADDRESS CHECKED

RECEIPT # 177150

PERMIT # **W** 4755

WATER WELL PERMIT

SITE LOCATION: Carmel Valley Road APN# A09-162-17

OWNER: Rancho Canada ADDRESS: P.O. Box 22590

CITY: Carmel, CA 93922 PHONE # 624-0111

DRILLING CONTRACTOR: Roman Well Drilling LICENSE# 265064

CONDITIONS: 1. Notify the Health Department 24 hours prior to the time you expect to seal the well.

2. Notify the Health Department prior to moving on site.

3. Location of the well must not prevent the installation of a septic on any adjoining lot.

4. The well must be 100 feet from any leachfield and 150 feet from any seepage pit, and 50 feet from any property line.

5. Provide a sounding tube on well pursuant to Rule 509 of MPWMD Rules and Regulations.
NOTE: If well owner options for power consumption correlation method in reporting to MPWMD, a separate electrical meter is required. The other two methods do not require a separate meter.

DATE ISSUED: 4-14-88 EXPIRATION DATE: 4-14-89

ISSUED BY: *[Signature]*

A2



**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

187 Eldorado • Suite E • P.O. Box 85 • Monterey, CA 93940 • (408) 849-4866

DECLARATION OF REPORTING STATUS

This form must be completed and filed by the owner and/or agent on behalf of the owner of a new or existing water well within the Monterey Peninsula Water Management District.

Assessor's Parcel No.: A0946217

Permit No.: _____

Site Location of the Well (Include Map): RANCHO CANADA GOLF COURSE
WEST COURSE AT 17TH

Name and Mailing Address of Owner/Agent: P.O. BOX 22590
CARMEL, Ca. 93922

Owner's Phone Number: 624-0111 Agent's Phone Number: 624-0111

REPORTING METHOD

I, the undersigned owner and/or agent on behalf of the owner of the well identified above, agree to report my annual water production by placing a check mark by the appropriate reporting method below, in order to satisfy my obligation under Section 354 of the Monterey Peninsula Water Management District Law and Rule 502 of the Rules and Regulations of the Monterey Peninsula Water Management District (MPWMD).

☐ Land Use Method: This method is appropriate for wells with a discharge opening smaller than two inches in diameter and that are located on a parcel which is smaller than 2 1/2 acres. Questions on the reporting form include area and type of irrigation, water uses, and other questions pertinent to the computation of water production from the well.

☐ Water Meter Method: This method requires installation and maintenance of a water meter on the well in accordance with the timetable, specifications and installation configuration required by Rule 506 of the Rules and Regulations of the MPWMD. Reporting entails reading the meter at the beginning and end of each reporting period.

☒ Power Consumption Method: This method authorizes the MPWMD to access copies of the Pacific Gas and Electric Company bills for the power supplied to the well, so that water usage can be determined from the kilowatt-hours used during each reporting period. This reporting method also authorizes the MPWMD to use copies of the pump efficiency tests that must be performed every two years. WELL MUST BE ON A SEPARATE ELECTRICAL METER.

ACCOUNT NO.: 1094256

PUMP HORSEPOWER: 50

☐ Inactive Well Method: This method should be used only if there is no water production from the well, but the well is capable of production. The annual forms ask only whether or not the well is still inactive.

The elected reporting method shall be effective until such time as an amended Declaration of Reporting Status form is filed with the MPWMD. Information regarding MPWMD Rules and Regulations is available at the District office.

I will notify this office upon the sale of the property described above. I declare under penalty of perjury that the information in this application is true and correct to the best of my knowledge.

X Signature: Nick D. Lombardo

Name: N.D. Lombardo

X 4-12-88

Signature of this
as an amended form

MONTEREY COUNTY HEALTH DEPARTMENT
DIVISION OF ENVIRONMENTAL HEALTH

APPLICATION TO CONSTRUCT, REPAIR OR DESTROY A WATER WELL



DATE OF APPLICATION _____

RECEIPT # 177150

X LOCATION OF SITE CARMEL VALLEY RD (ACRES) _____ ASSESSOR'S PARCEL # A09-162-17

OWNER RANCHO Canada ADDRESS P.O. BOX 22590- Carmel, Ca. 93922

CITY Carmel, Ca. 93922 PHONE NUMBER 624-0111 Don Boston

DRILLING CONTRACTOR ROMAN WELL DRILLING CO. LICENSE # Ca. 265064

BUSINESS ADDRESS 2896 Seguel Ave. Santa Cruz, Ca. 95062 PHONE # 476-6800

DESIGN SPECIFICATIONS: Construction XX Repair _____ Destruction _____

INTENDED USE: DISTANCE FROM WELL SITE TO: TYPE OF WELL:

Domestic, private _____ Septic Tank Systems (ft.) _____ Rotary xx

Domestic, public _____ N/A _____ Cable _____

Irrigation xx Sewer (ft.) _____ Dug _____

Industrial _____ Other _____

Other _____ CASING: ESTIMATED WORK:

CONSTRUCTION PROPOSED: Start April 13, 1988

Depth (ft.) 100' Single xx Double _____ Finish _____

Diameter (in.) 12" Material PVC

Width seal (in.) 6" Type of Joint glued

Depth seal (ft.) 50' Gravel pack Yes

Depth perforations 60'

X EXISTING WELLS ON PROPERTY:

(1) Number of other wells on property 4

(2) Types of other wells on property: Domestic _____ Irrigation 4 Industrial _____

(3) Condition of other wells on property: In use 3 To be abandoned 1

Abandoned _____ Destroyed _____

(4) Please indicate intentions for use of replaced well:

a) To be abandoned 1 c) To be destroyed _____

b) To supplement new well _____ d) Other _____

WELL DESTRUCTION:

Depth of well _____ Depth of proposed seal _____ Materials to be used to seal:

Number of water formations penetrated _____

Cleaning of well required: Yes _____ No _____

I HEREBY AGREE TO COMPLY WITH ALL LAWS AND REGULATIONS OF THE COUNTY OF MONTEREY AND THE STATE OF CALIFORNIA PERTAINING TO WATER WELL CONSTRUCTION. I WILL CONTACT THE MONTEREY COUNTY HEALTH DEPARTMENT WHEN I COMMENCE THE WORK. WITHIN 15 DAYS AFTER COMPLETION OF THE WORK, I WILL FURNISH THE MONTEREY COUNTY HEALTH DEPARTMENT A WELL LOG AND NOTIFY THEM BEFORE PUTTING IT INTO USE.

I UNDERSTAND APPROVAL OF THE WATER WELL PERMIT DOES NOT INDICATE WHETHER THIS PROPERTY IS SUITABLE FOR AN INDIVIDUAL SEWAGE DISPOSAL SYSTEM OR THAT A PERMIT TO INSTALL SUCH A SYSTEM IS GRANTED.

PROPERTY OWNER: Refik Samad DRILLING CONTRACTOR: Ken Roman

OFFICE USE ONLY

	DATE	INITIAL	COMMENTS
Preliminary inspection	<u>4/14/88</u>	<u>AV</u>	
Seal inspection			
Final inspection			
Receipt of Well Log			
Disposition of Other Wells: Abandoned _____ Destroyed _____ Supplement _____			

COPIES: WHITE-(FILE) YELLOW-(DRILLER) PINK-(BUILDING DEPARTMENT) GOLD-(FLOOD CONTROL)
ENVIRONMENTAL HEALTH OFFICES

(MONTEREY) 1200 Aguajito Rd.
Monterey, CA. 93940

(408) 373 - 0111
MCHD - EH - 16 REVISED 12/84pr)

(SALINAS) 1270 Natividad Road
Salinas, CA. 93906

(408) 757 - 1061

(KING CITY) 1180 Broadway
King City, CA. 93930

(408) 385 - 1291

255-4580



CARMEL VALLEY RD.
RANCHO CNANDA
ISSUED: 4-14-88
U.S. Patent No. 5,004,907

W 4755

COMPLETED: 4-19-88



RECORDING REQUESTED BY
CHICAGO TITLE COMPANY
AND WHEN RECORDED MAIL TO

Lombardo Land Group I, L.P.
P.O. Box 222297
Carmel, Ca. 93922

Joseph F. Pitta
Monterey County Recorder
Recorded at the request of
Chicago Title

CRBARBARA
9/08/1999
8:00:00

DOCUMENT: 9967284



9967284

Titles: 1/ Pages: 9

Fees 30 00

Taxes 1.100 00

Other

AMT PAID \$1.130 00

Escrow No. 1714419 - IJ
Order No. 1714419 - RO

SPACE ABOVE THIS LINE FOR RECORDERS USE

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)
DOCUMENTARY TRANSFER TAX IS \$1,100.00

☒ unincorporated area ☐ City of

☒ computed on the full value of the interest or property conveyed, or is

☐ computed on the full value less the value of liens or encumbrances remaining at time of sale, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
SEE GRANTOR EXHIBIT ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE

hereby GRANT(S) to
Lombardo Land Group I, L.P.

the following described real property in the
County of Monterey

State of California:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE

Dated August 12, 1999

SEE SIGNATURE EXHIBIT ATTACHED HERETO

STATE OF CALIFORNIA
COUNTY OF Monterey } SS.
On September 1, 1999 before me,
Irene Jones

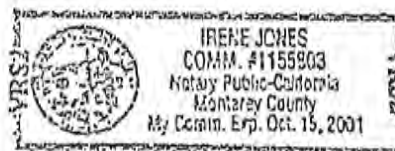
a Notary Public in and for said County and State, personally appeared
Janet L. Ottone and Charles W. Ottone

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Irene Jones
Signature of Notary

10-15-2001
Date My Commission Expires



FOR NOTARY SEAL OR STAMP

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE: IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE

Name Street Address City, State & Zip

001 -00/00/0704

A6

Page 1

Escrow No. 1714419 -IJ

GRANTOR EXHIBIT

Janet Ottone and Charles W. Ottone as Trustees of the Revocable Ottone Family Trust, and Norma L. Barker, Co-Trustee; William Louis Barker, Co-Trustee; Thomas Alan Barker, Co-Trustee; Susan Elizabeth Hoag, Co-Trustee and Carole Ann Hays, Co-Trustee of the Trust Agreement and Declaration of Trust dated April 2, 1993 of William H. Barker and Norma L. Barker, Trustors

DEED/GRANT-04/02/1424

Page 1

Escrow No. 1714419 - LJ

LEGAL DESCRIPTION EXHIBIT

PARCEL I:

Certain Real Property situate, lying and being in Rancho Canada de la Segunda, in the County of Monterey, State of California, and being a part of Lot 14 as said Lot is shown and so designated upon that certain map entitled "Partition map of Hatton Property in Rancho Canada de la Segunda", a copy of which map is attached to "Order granting consent of partition", Recorded March 17, 1927, in Volume 109, Page 1 Official Records, Monterey County Records, said part being particularly described as follows:

Beginning in the Easterly boundary of said Lot 14, at its intersection with the Southerly line of Carmel Valley Road (a County Road 50 feet wide), and running thence from said place of beginning along said Easterly boundary,

(1) S. 2759.2 feet, at 756.2 feet an old 4" X 4" post, at 1235.63 feet a point herein and now designated as point "F" for the purpose of reference thereto in further description hereinafter to be made, at 2232.13 feet a point herein and now designated as point "J" for the purposes of reference thereto in further description hereinafter to be made, at 2489.1 feet an old 4" X 4" post, 2759.2 feet to an angle point in said Easterly boundary; thence

(2) S. 54° E., 252.8 feet; thence

(3) S. 22° 27' E., 78.0 feet to the Southeasterly corner of said Lot 14; thence along the Southerly boundary thereof,

(4) N. 64° 31' W., 298.9 feet; thence

(5) S. 18° 29' W., 100.0 feet; thence

(6) N. 78° 16' W., 91.48 feet; thence leaving last mentioned boundary and running,

(7) N. 2925.42 feet, at 510.03 feet a point herein and now designated as "K" for the purpose of reference thereto in further description hereinafter to be made, at 1711.06 feet a point herein and now designated as "E" for the purpose of reference thereto in further description hereinafter to be made, 2925.42 feet to a 1" diameter iron pipe, top 18' underground standing in said Southerly line of Carmel Valley Road; thence along said Road Line,

(8) N. 89° 4' E., 156.8 feet to the place of beginning.

EXCEPTING THEREFROM, that certain parcel of land described as Parcel 2 in the Deed from WM. Hatton, et ux, to Dudley Swim et ux, Recorded May 31, 1955 in Book 1620, Page 278, Official Records.

A.P. No. 015-162-025 and 015-162-026

PARCEL II:

A non-exclusive right of way appurtenant for all purposes of a road over, upon and across the following described parcel of land:

DEED 221-05/00/9464

LEGAL DESCRIPTION EXHIBIT

Beginning at a point in the Southerly line of Carmel Valley Road (A County Road 50 feet wide) from which the Northeast corner of said Lot 14 bears with the following three courses and distances: N. 85° 12' E., 336.14 feet along said road line; thence N. 89° 14' E., 273.79 feet along said road line to a point in the Easterly boundary of said Lot 14, and thence along said boundary N. 25.0 feet distant, and running thence from said point of beginning S. 2073.45 feet at 2065.04 feet a point herein and now designated as point "G" for the purpose of reference thereto in further description hereinafter to be made, 2073.45 feet to a point; thence tangentially curving to the left on a circular arc of 20 feet radius through an angle of 44° 25' for a distance of 15.5 feet; thence tangentially curving to the right on a circular arc of 50 feet radius through an angle of 26° 50' for a distance of 234.6 feet; thence; tangentially curving to the left on a circular arc of 20 feet radius through an angle of 44° 25' for a distance of 15.5 feet; thence tangentially N. 2068.42 feet; at 17.1 feet a point herein and now designated as point "H" for the purpose of reference thereto in further description hereinafter to be made, 2068.42 feet to a point inside Southerly line of Carmel Valley Road; thence along said Road Line N. 85° 12' E., 60.21 feet to the place of beginning.

PARCEL III:

A non-exclusive right of way appurtenant for all purposes of a roadover, upon and across a strip of land 20 feet wide lying along, contiguous to, an Southerly from the following described lines:

(1) Beginning at the hereinbefore mentioned point "G" and running thence S. 81° 46' E., 58.77 feet; thence S. 10° 46' W., 61.45 feet; thence S. 12° 11' E., 32.93 feet; thence S. 57° 20' E., 431.4 feet; thence N. 69° 27' E., 37.53 feet; thence N. 20° 30' E., 89.27 feet; thence N. 50° 58' 40" E., 161.58 feet to a point in the Easterly boundary of said Lot 14,

(2) Beginning at the hereinbefore mentioned point "H" and running thence N. 81° 46' W., 59.5 feet; thence N. 55° 30' W., 245.58 feet; thence S. 66° 41' W., 71.24 feet; thence S. 85° 05' W., 229.81 feet to a point in the Westerly boundary of said Lot 14.

PARCEL IV:

That certain real property situate in the County of Monterey, State of California, described as follows:

That part of the said Rancho Canada de la Segunda in Monterey County, State of California, which is shown and designated as Lot 13 on the Aforesaid Partition Map. Said Lot 13, as said Lot is shown and designated on the Aforesaid Partition map, is more particularly described as follows:

That part of the Rancho Canada de la Segunda beginning at Station 23 of the Patent Survey boundary of the Rancho Canada de la Segunda; thence

(1) S. 87° 30' E., 1637.0 feet, along a boundary to a 4" X 4" post marked WH, HH, CS, standing at the common corner of Lots 12 and 13, as said lots are shown and designated on the Aforesaid Partition Map, from which a 4" X 4" post marked CS, 22, standing at Station 22 of the Canada de La Segunda Rancho bears S. 87° 30' E., 480.8 feet distant; thence leave the said boundary and along line between said Lots 12 and

Page 3

Escrow No. 1714419 -IJ

LEGAL DESCRIPTION EXHIBIT

13,

(2) N. 2650.0 feet, at 127 feet an alder tree, 14 inches in diameter marked with tree notches fore and AFT, at 449 feet a 2" X 2" post marked WH, HH. Line, standing on the left Bank of Carmel River, at 710.4 feet a 4" X 4" post marked WH, HH. Line, standing on the right Bank of said River, at 1148.6 feet a 4" X 4" post marked WH, HH. Line, at edge of Willows, at 1850.7 feet a 4" X 4" post marked WH, HH, line, at 2620.7 feet a 4" X 4" post marked, WH, HH, WP, in fence on the South side of the Carmel Valley County Road, 2650.0 feet to point in center line of Carmel Valley County Road; thence along the center line of said road Toward Monterey, with the following six courses and distances,

(3) N. 71° 01' W., 35 feet,

(4) N. 62° 50' W., 300 feet,

(5) N. 63° 28' W., 300 feet,

(6) N. 68° 21' W., 175 feet,

(7) N. 83° 26' W., 185 feet, to common corner of Lots 4 and 5, as said lots are shown and designated on the aforesaid Partition Map, from which a 4" X 4" post marked HHH, WH, WP, standing in fence on the North side of Carmel Valley County Road bears N. 11° 47 1/4' E., 26.0 feet distant; thence continue along center line of said road,

(8) S. 89° 14' W., 925 feet to station at common corner of Lots 13 and 14, as said lots are shown and designated on the aforesaid Partition Map, from which a 4" X 4" post marked HHH, WH, standing in fence on South side of said Road bears S. 25.2 feet distant; thence along the line between said Lots 13 and 14; thence

(9) S. 2794.2 feet, at 25.2 feet a 4" X 4" post marked HHH, WH, WP, at 781.2 feet a 4" X 4" post marked HHH, WH, line, at 2264.1 feet a 4" X 4" post marked HHH, WH, line, standing in edge of willows, at 2514.1 feet a 4" X 4" post marked HHH, WH, line, 2784.2 feet to a 4" X 4" post marked CS, HHH, WH, standing in the patent survey boundary of the Rancho Canada de la Segunda, from which an alder tree, 10 inches in diameter, bears S. 49 1/4° W., 10.9 feet distant, and a cottonwood tree, 10 inches in diameter, bears S. 37 3/4° E., 8.0 feet distant, both trees marked BT; thence along said Rancho boundary,

(10) S. 54° E., 252.8 feet to the place of beginning.

Excepting from Parcels I and IV above,

That portion thereof lying within the lines of that tract of land described in the following Deeds.

(A) EXECUTED BY: William Hatton and Louise M. Hatton, his wife
TO : Carmel Unified School District, a body politic

DATED : December 27, 1956

RECORDED : February 28, 1957 in Book 1773, Page 443, Official Records

(B) EXECUTED BY: Louis M. Hatton TO : Carmel Unified School District, a

CEEDLEGL-25/00/0415

Page 4

Escrow No. 1714419 - 13

LEGAL DESCRIPTION EXHIBIT

body politic

DATED : February 3, 1961

RECORDED : March 13, 1961 in Book 2130, Page 43, Official Records

Also excepting from Parcel I and IV above that portion thereof lying within the following described:

That certain Real Property situate in the Rancho Canada de La Segunda in the County of Monterey, State of California, being a portion of Lots 13 and 14 as said lots are shown on map entitled "Partition Map of Hatton Property in Rancho Canada de La Segunda", a copy of which map is attached to "Order granting Consent of Partition", Recorded March 17, 1927 in Volume 109 of Official Records at Page 1, Records of said County, said part being particularly described as follows:

Beginning at a 2" X 2" stake standing at the Southwest corner of that certain 45.000 acre tract of land described in Deed from Louise M. Hatton to Carmel Unified School district (a body politic) dated February 3, 1961 and recorded in Volume 2130 Page 43, Official Records of said County, and running thence along the Southerly boundary of said 45.000 acre tract of land,

(1) S. 89° 59 1/4' E., 1,703.29 feet to a 1 1/2" diameter iron pipe standing at the Southeast corner of said 45.000 acre tract of land; thence along the Easterly boundary thereof,

(2) N. 0° 00 3/4' W., 421.4 feet to a 1 1/2" diameter iron pipe; thence

(3) S. 89° 59 3/4' E., 232.67 feet to a 1 1/2" diameter iron pipe; thence continuing along said Easterly boundary 60 feet Westerly from (measured at a right angle) the Easterly line of said Lot 13,

(4) N. 0° 00 1/2' E., 600.21 feet to the Northeast corner of said 45.000 acre tract of land in the Southerly line of Carmel Valley Road as described in Deed from William Hatton, et ux, to County of Monterey (a body Politic and Corporate) Dated August 31, 1950 and Recorded on Volume 1262, Page 409, Official Records, of said County; thence along said Southerly Road Line,

(5) S. 68° 59' E., 64.27 feet to a 3/4" diameter iron pipe standing at the intersection of said Southerly Road line with said Easterly line of Lot 13 from which a 4" X 4" post standing on top of a cut Bank bears along said Easterly line N. 0° 00 1/2' E., 3.5 feet distant; thence leave said Road Line and running along said Easterly lot line,

(6) S. 0° 00 1/2' W., 637.17 feet to a 1 1/2" diameter iron pipe; thence leaving said Easterly line and running parallel to and 60 feet Southerly from (Measured at right angle) that certain course herein before numbered "(3)" and its production Easterly,

(7) N. 89° 59 3/4' W., 232.65 feet to a 1 1/2" diameter iron pipe; thence parallel to and 60 feet Easterly from (Measured at a right angle) that certain course hereinbefore numbered "(2)" and its production Southerly,

(8) S. 0° 00 3/4' E., 421.4 feet to a 1 1/2" diameter iron pipe; thence parallel to and 60 feet Southerly from (Measured at a right angle) a portion of that certain

DEED 001-001/0464

Page 5

Escrow No. 1714419 -IJ

LEGAL DESCRIPTION EXHIBIT

course hereinbefore numbered "(1)" and its production Easterly

(9) N. 89° 57 1/4' W., 638.95 feet to a 1 1/2" diameter iron pipe; thence

(10) S. 22° 35 1/2" W., 26.99 feet; thence

(11) N. 89° 59 1/4' W., 1,114.1 feet to a point in the westerly line of that certain 10.89 acre tract of land shown on map entitled "Record of survey showing division of property in Lot 14 per Hatton Partition of Rancho Canada de La Segunda" filed February 19, 1957 in Volume 5 of surveys at Page 94, Records of said County; thence along said westerly line,

(12) N. 83.92 feet to the place of beginning.

A.P. No. 015-162-017, 015-162-039 and 015-162-040

PARCEL V:

A non-exclusive right of way for road and utility purposes over, upon and across a strip of land 60 feet wide lying along, contiguous to and westerly and northerly from those certain courses numbered "(6)", "(7)", "(8)", "(9)" in the above described exception.

PARCEL VI:

That certain real property situate in the County of Monterey, State of California, described as follows:

Beginning at the hereinabove mentioned Station 23 of the patent survey boundary of the Rancho Canada de La Segunda; thence

(1) S. 87° 30' E., 1636.46 feet along said boundary to the common corner of Lots 12 and 13, as said lots are shown and designated on the aforesaid partition map; thence

(2) S. 69.75 feet; thence

(3) N. 87° 3' W., 1606.55 feet; thence

(4) N. 22° 22' W., 78.35 feet to the point of beginning.

Page 1

Escrow No. 1714419 -IJ

SIGNATURE EXHIBIT

Janet L. Ottone and Charles W.
Ottone, as Trustees of the
Revocable Ottone Family Trust

Janet L. Ottone
Janet L. Ottone, Trustee

Charles W. Ottone
Charles W. Ottone, Trustee

Norma L. Barker, William Louis Barker,
Thomas Alan Barker, Susan Elizabeth
Hoag and Carole Ann Hays, Co-Trustees
of the Trust Agreement and Declaration
of Trust dated April 2, 1993 of William
H. Barker and Norma L. Barker, Trustees

Norma L. Barker
Norma L. Barker, Co-Trustee

William Louis Barker
William Louis Barker, Co-Trustee

Thomas Alan Barker
Thomas Alan Barker, Co-Trustee

Susan Elizabeth Hoag
Susan Elizabeth Hoag, Co-Trustee

Carole Ann Hays
Carole Ann Hays, Co-Trustee

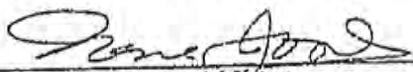
STATE OF CALIFORNIA)
COUNTY OF MONTEREY) SS.

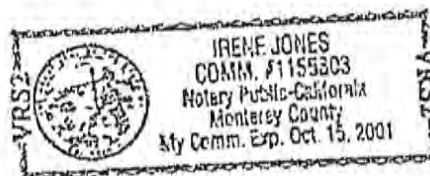
On September 3, 1999 before me, Irene Jones

a Notary Public in and for said County and State, personally appeared Norma L. Barker
William Louis Barker, Thomas Alan Barker, Susan Elizabeth Hoag and Carole Ann Hays

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


Signature of Notary



STATE OF CALIFORNIA)
COUNTY OF _____) SS.

On _____ before me, _____

a Notary Public in and for said County and State, personally appeared _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary



535 CAPITOL MALL
10TH FLOOR
SACRAMENTO, CA 95814-1686
TELEPHONE (916) 441-0131
FAX (916) 441-4021

KEVIN M. O'BRIEN
SCOTT L. SHAPIRO

January 9, 2003

Ms. Alana Knaster
Chief Assistant Director
Monterey County Planning and Building Inspection Department
2620 First Avenue
Marina, CA 93933

Re: Riparian Right Determination for September Ranch (Monterey County)

Ms. Knaster:

We are acting as special counsel to the County of Monterey. September Ranch Partners, a general California partnership, is the fee owner of September Ranch (real property more specifically described in Exhibit "A" attached hereto), on which the partnership intends to build a residential community. Monterey County is the approving jurisdiction for any development on the September Ranch. We have been retained on the issue of whether the September Ranch holds valid riparian rights to the Carmel River (including its underflow).

**OVERVIEW OF CALIFORNIA WATER LAW
IN RELATION TO RIPARIAN RIGHTS**

California law establishes two principal categories of rights to surface water: riparian rights and appropriative rights. This letter is expressly limited to a determination of riparian rights for the September Ranch.

A riparian right is an incident of the ownership of land that abuts a watercourse, such as a river, stream, lake, or pond. The California courts have stated that the right is not a mere easement or appurtenance, but is part and parcel of the riparian land.

In California, riparian land is defined as the smallest parcel held under one title in the chain of title leading to the present owner. This is known as the "source of title" rule. An important result follows from this rule: The riparian tract may never become bigger than the original patent size, but it may become smaller, for example, by the severance of riparian rights from non-waterfront parcels when a riparian tract is subdivided, or when a party deliberately severs the riparian right of the property. Once riparian status for a parcel of land is lost due to severance, the parcel can never re-acquire riparian status.

A riparian right will also exist for a parcel that overlies the underflow of a river or other watercourse. In that case, the parcel may be riparian by virtue of it abutting the watercourse, or by virtue of it overlying the underflow of the watercourse.

A riparian right is limited to use on the parcel that is riparian; the right cannot be transferred for use on another parcel, whether or not that other parcel is riparian to the watercourse. In addition, the water may be used only upon that portion of the parcel that is within the watershed of the watercourse. Riparian water rights may be used for a number of purposes, including irrigation, stock watering, domestic use, generation of power, and recreation.

The California Constitution requires all uses of water, including uses under riparian rights, to be reasonable and beneficial. What is reasonable and beneficial is not static, and may change over time. Whether a particular use of water is reasonable and beneficial depends on the facts and circumstances surrounding such use.

To exercise a riparian right, one may divert the water for use on the parcel directly from the watercourse at any point along the parcel (or on the parcel via a well in the case of underflow). The water may also be diverted upstream of the parcel and conveyed to the parcel so long as doing so does not interfere with the rights of others (typically, any parties upstream of the parcel but downstream of the diversion).

A riparian right does not extend to seasonal storage of water; that is, the collecting of water in a reservoir during times of surplus for use during times of deficiency. The State Water Resources Control Board ("State Board") has defined "storage" as holding the water for more than 30 days. One may, therefore, divert the water

into a small reservoir or pond, and so long as it is used within 30 days, it would not be considered storage.

A riparian right in California tends to be a very senior water right. Its seniority on the watercourse is determined by the patent date of the riparian parcel or, in some instances, the commencement of the acts of settlement that eventually resulted in the issuance of a patent. If no holder of an appropriative right on the same watercourse can establish a right prior to the patent date, then the riparian right must be satisfied before all appropriators take water. In such a case, the measure of the riparian right is the amount that can be reasonably and beneficially used on the riparian parcel. That right, however, is correlative with other riparian users on the watercourse. Therefore, at times when the supply in the watercourse is insufficient to satisfy all reasonable and beneficial uses on riparian lands, the riparian lands share the shortage. It should be noted that in California there are some appropriative rights that are more senior than riparian rights. In these cases, the holder of the appropriative right may divert the maximum extent of the appropriative right, even if such diversion leaves no water available for riparian lands.

CONCLUSIONS

We have reviewed the **Materials Examined** (as stated below) and performed the **Analysis** (as stated below). Based upon the **Materials Examined and Analysis**, and subject to the **Assumptions, Limitations, Matters of Reliance, and Qualifications** (as stated below), it is our conclusion that:

1. The September Ranch has a riparian right to the waters of the Carmel River (including its underflow).
2. The riparian right of the September Ranch has been subordinated to those pre-1914 rights of the California-American Water Company which were determined in State Water Resources Control Board Order WR 95-10.
3. Although stated below in more detail (in paragraph 1 of **Assumptions, Limitations, Matters of Reliance, and Qualifications**), we note that we make no conclusions regarding the physical availability of water in the

Carmel River (including its underflow) for use on the September Ranch property. That hydrologic determination should follow.

4. Although stated below in more detail (in paragraph 2 of **Assumptions, Limitations, Matters of Reliance, and Qualifications**), the conclusions contained in this letter are based upon the assumption that the underflow of the Carmel River physically occurs beneath the surface of September Ranch. As with the issue of physical availability, a hydrologic and geologic determination on this issue should also follow.

ANALYSIS

In a determination of whether a riparian right is severed, the parties' intention is paramount. *Rancho Santa Margarita v. Vail* (1938) 11 Cal. 2d 501, 540. Thus, it is the transferor's intent that controls, and that intent is best found from an examination of the conveyance document. In fact, where courts have found that a severance of a riparian right has occurred for property being transferred to another owner, it has been because the courts assume that people do not intend to grant valuable rights without making their intention to do so clear. *Rancho Santa Margarita*, 11 Cal.2d at 538-39.

Here, previous owners of the September Ranch twice conveyed access rights for the construction of a pipeline across the September Ranch. As part of those conveyances, the former owners included language purporting to grant some sort of right in regard to water appropriation. The question is whether that language in any way affected the riparian right associated with the September Ranch at the time.

In a September 1, 1882 conveyance (recorded in Volume D Misc., Page 177 of the official records of Monterey County) from Dominga G. De Atherton, then-owner of the Rancho Canada de la Segunda, of which the September Ranch is a part, to C.P. Huntington (predecessor-in-interest to California-American Water Company), Atherton conveyed the following right and received five dollars in consideration:

the right of way across my said property to construct and maintain a water pipe of such capacity as the said C.P. Huntington . . . may elect to

construct over and across my said tract of land there situate; and I do also hereby grant, for the consideration aforesaid . . . the right to appropriate, divert and take out of waters of said [Carmel] River . . . and transport said water to such point or points as he . . . may elect, and to use the same forever. The foregoing grant is made upon the condition that the said C.P. Huntington . . . shall within a reasonable time after the laying of the water pipe . . . insert in said pipe at such point as I shall designate, a tap or cock sufficient to furnish to me a supply of two thousand gallons of water per day therefrom, and that I shall at all times have the right to draw from said pipe the said quantity. . . , provided however, that if the supply of water obtained by the said C.P. Huntington . . . through said pipe shall be insufficient to enable them to supply me with the said daily quantity of water, such failure so to do shall not be held to be a breach of this condition.

In an October 16, 1906 conveyance (recorded in Volume 95 Deeds, Page 33 of the official records of Monterey County) from Mrs. Kate K. Hatton *et al.*, then-owners of a portion of the Rancho Canada de la Segunda, of which the September Ranch is a part, to the Pacific Improvement Company (predecessor-in-interest to California-American Water Company), Hatton *et al.* conveyed the following right:

the water of the Carmel River, Monterey County, California, and the right to appropriate for any purpose whatever and conduct to any place whatever such portions of said water as it or they at any time desire to take, and also at any time and from time to time substitute for or lay in addition to said grantee's present pipe line running through our land for conducting the water of said river to Monterey, a different and larger pipe or pipes. . . . The consideration of the above grant is that we and our heirs and assigns shall at all times have the right to draw from said pipe or pipelines through taps or cocks placed by the Pacific Improvement Company, its successors or assigns, water for dairy, stock and domestic purposes, at the upper and lower dairies, upon said lands without charge, it being understood that if any additional water troughs for stock (there now being 6 in number) are placed on said lands, that we shall pay the grantee . . . for each additional trough so placed as follows. . . . however, that if the supply of water obtained by the said Pacific Improvement Company . . . through said pipe or pipelines shall be insufficient by reason of drouth or drying up of said river to enable it or them to supply us with the said daily

quantity of water, such failure shall not be held to be a breach of this contract.

By their language both of these conveyances give to the grantee the right to "appropriate" water from the Carmel River. Because in both cases the grantor did not have the legal ability to grant a right of appropriation (that right being a function of perfecting a right through one's own actions¹⁷), the language must be interpreted as having been included for another reason.

One possible interpretation for the inclusion of the language is that the grantor was intending to sever the riparian right associated with the grantor's property (including the September Ranch). But such an interpretation is at odds with the later reservation, found in both grants, of the grantor's right to take water from the grantee's pipeline. In other words, in reserving a right to use water from the river (via the grantee's pipeline), the grantor must be presumed to have reserved all rights necessary to exercise such a right. Thus, in order to give the language regarding appropriation meaning, while not ignoring the language regarding the grantor's right to take water from the pipeline, one must read the two conveyance documents as an agreement on the part of the grantor to not complain about any appropriations made by the grantee from the Carmel River. In addition, the plain language used in the deeds ("a right to appropriate") seems to convey a right to *develop* an appropriation, as opposed to the conveyance of an existing appropriative or riparian right.

Such an interpretation is consistent with California case law on the topic. In *Duckworth v. Watsonville Water and Light Co.* (1907) 150 Cal. 520, the owner of land riparian to the outlet from Pinto Lake conveyed to a lessee of land on the lake his riparian right to the water of the outlet. In determining the effect of that grant, the court found that the "deed operated to prevent him from complaining of a diversion. . . ." *Id.* at 526. Also in this case, the owner of land riparian to the lake granted to another riparian (the Watsonville Water and Light Co.) all of the

¹⁷ Prior to the approval of the Water Commission Act of 1913 (December 19, 1914), one could develop an appropriative right in California by providing notice of an intent to appropriate water, followed by the actual diversion and beneficial use of the water to be diverted. Thus, prior to 1914, one could perfect a water right by merely appropriating water and making that appropriation public. One could not, and still cannot, however, deed the right to develop an appropriative right to another.

grantor's water rights. In discussing this second grant, the court stated that "[t]he deed was evidently proposed to protect the grantees [Watsonville] from interference in their proposed diversion of water from the lake." *Id.* at 528.

Note that the court in *Duckworth* actually goes further in describing this second grant as effecting a "severance" of the grantor's riparian right. *Id.* at 527. However, the *Duckworth* grant used very expansive language (compared to the language used in the 1882 and 1906 deeds) actually conveying to the grantee "all and singular the water and riparian and water rights and privileges of every kind, character and description, which belong or in any manner pertain to" the property owned by the grantor. *Id.* at 524. This language is distinguishable from the language used in the 1882 and 1906 deeds in two relevant ways. First, the *Duckworth* grant actually states that it conveys the grantor's "riparian" rights, while the 1882 and 1902 deeds merely convey a right to "appropriate." Second, the riparian right conveyed in *Duckworth* was specifically that right pertaining to a parcel of real property, an apparent recognition that the right is part and parcel of land, and not property owned separate from land. In the 1882 and 1906 deeds no such explicit connection to realty exists, at least in part because the right granted was a right to appropriate water, not a conveyance of an existing right.

As such, it appears that the effect of the 1882 and 1906 deeds is merely to prevent the grantor (now September Ranch Partners) from complaining about any appropriation made by the grantee (now California-American Water Company), even if the appropriation results in insufficient water remaining in the Carmel River (or its underflow) to meet the water supply requirements of September Ranch. This conclusion is also consistent with the language in both grants that it shall not be considered a breach of the deeds if the exercise of the appropriation by the grantee results in there being insufficient water in the pipeline for the needs of the grantor. The effect of this "non-breach" language is to subordinate the priority of the September Ranch riparian right to appropriative rights established by California-American Water Company. Under the broad language of the grants (allowing for appropriation "at any time") it appears that such a subordination includes rights developed at that time as well as rights developed in the future.^{2/}

² Through a July 18, 1977 Agreement and Grant of Easements between Howard J. Morgens (then-owner of the September Ranch) and California-American Water Company, the Company reconveyed and quitclaimed to Morgens all interests conveyed by the 1882 deed. This
(continued...)

Note that the subordination to California-American Water Company's appropriative rights does not mean that September Ranch loses its priority vis-a-vis other appropriators, or its right to share available water with other riparians. As noted in *Duckworth*, the effect of a grant like this is to affect the relationship of the grantor and the grantee, not their relationship in regard to third parties.

The Amended Declaratory Judgment dated January 14, 1986 in *Hacienda Carmel Community Association et al. v. California American Water Company* (Monterey Case No. 79750) is also consistent with our interpretation of the effect of the 1882 and 1906 deeds. This Amended Declaratory Judgment arose out of a stipulation of the parties as to the legal effect of the deeds. The Judgment states in relevant part:

The legal effect of the deeds attached hereto as Exhibit "A" and "B" [the 1882 and 1906 deeds] was not to convey away the grantor's riparian rights to the Carmel River as owners of the real property described in Paragraph 1, but to subordinate such riparian rights to Defendant's prior right to appropriate and use water from the Carmel River.

The property described in paragraph 1 is a portion of the Rancho Canada de la Segunda owned by the grantors of the 1882 and 1906 deeds, but not the portion of the Rancho that includes the September Ranch. Nonetheless, while the Judgment is not necessarily binding on the September Ranch, it does interpret deeds that affect the September Ranch in the same way that those deeds affect the Hacienda Carmel property.

The Judgment concludes that the effect of the two deeds was to subordinate the riparian right of Hacienda Carmel to California-American Water Company's "prior right to appropriate and use water." Under the plain language of this Judgment, the riparian right would be subordinated to only those "prior" rights to appropriate water. Such prior rights would appear to be any rights acquired prior

² (...continued)

conveyance is not relevant to the severance issue because, even if the 1882 deed had severed the riparian right, this deed could not "re-attach" that right. However, this conveyance is relevant to the subordination issue, and has the effect of negating any subordination created by the 1882 deed. As a practical matter, this negation of the subordination is largely irrelevant because the 1906 deed includes language adequate to provide for subordination.

to the date of the second deed, October 18, 1906. This limited view of the effect of the relevant language of the Judgment appears to be narrower than and inconsistent with the plain language of the two deeds which subordinated to prior *and future* appropriations, creating an ambiguity as to which rights of California-American Water Company are superior to September Ranch's riparian right.³

Likewise, the Agreement between California-American Water Company and September Ranch Partners dated August 24, 2000 (recorded at Volume 2000, Page 60374 of the official records of Monterey County) interprets the two deeds as subordinating the September Ranch's riparian right to the appropriative rights of California-American Water Company without severing the riparian right. This Agreement, albeit executed by parties that were apparently seeking to explain the effect of the previous deeds, and albeit interpreting the deeds later in time than when the parties executing their deeds had established their intent, still interprets the deeds as not intending to sever, or actually severing, the riparian right associated with the September Ranch. *Id.* at ¶1. The Agreement also offers an interpretation of the language in the two deeds on the issue of which of California-American Water Company's rights are superior to September Ranch's subordinated riparian right. It states in relevant part:

Notwithstanding the Judgment in Monterey County Superior Court Case No. 79750 . . . based on Decision 1632 and Order 95-10, September Ranch Partners' riparian rights appurtenant to the September Ranch property have a priority superior to Cal-Am's appropriative rights to the Carmel River and Carmel River underflow excluding Cal-Am's right to extract from the Carmel Valley Basin its pre-1914 appropriative water rights.

Id. at ¶2. This 2000 Agreement interprets the subordination as only applying to the pre-1914 rights. As noted above, a reasonable argument can be made that the subordination would apply to other appropriative rights established by California-American Water Company. But because the Company executed this Agreement, an agreement that limits the subordination to just the pre-1914 rights, it seems that California-American Water Company would now be estopped from arguing otherwise.

³ This Judgment resulted from a stipulation of the parties. This fact does not appear to lessen the value of the Judgment which remains a judicial interpretation of the effect of the two deeds in question on the Hacienda Carmel property.

A 1998 complaint was filed with the State Board by Patricia Bernardi and Fran Farina alleging that the September Ranch no longer had valid riparian rights. In the State Board staff report on the topic, after reviewing all of the materials submitted, staff states:

The deeds in Exhibit A and B [1882 and 1906 deeds] and the lease of June 26, 1890 do not appear to contain language which would sever or extinguish the riparian right of the property. At best, the language appears to subordinate the riparian right while preserving in the property the right to the use of some water from the river. Whether it was the intent of the parties to sever the riparian right cannot be determined from the documents submitted to the SWRCB. The appropriate forum, however, for making any such final determination as to the intent of this language would be a court of competent jurisdiction.

Staff Report of Investigation: Complaint Against September Ranch (January 1999) at 10.⁴ Thus, the Staff Report also supports our conclusion that the 1882 and 1906 deeds subordinated the riparian right of the September Ranch to certain rights now held by California-American Water Company.⁵

A further issue that has been raised is whether the assignment, by the County Assessor, of multiple assessor parcel numbers, has severed the riparian right of any portions of the September Ranch. As a preliminary matter it should be noted that as we deal here with underflow of the Carmel River, it is possible that every assessor's parcel making up the September Ranch may actually overlie the underflow of the Carmel River. As such, it would be unnecessary to consider the legal question because each of the assessor's parcels would itself be riparian. However, even if there was no such underflow in this case, the assigning of multiple parcel numbers does not sever a riparian right.

⁴ Despite this conclusion regarding the effect of the 1882 and 1906 deeds, the staff report did not result in an *affirmative* conclusion as to whether September Ranch has valid riparian rights.

⁵ The Report also considers the Amended Declaratory Judgment discussed above. While it notes that the "responsibility for making final determinations relative to the validity of a riparian claim rests with the Courts," it finds the Judgment to not be conclusive because, as noted above, it explicitly applies to a different part of the Rancho Canada de la Segunda than the September Ranch. *Id.* at 9.

As noted above, in determining whether a riparian right is severed, the parties' intentions are paramount. *Rancho Santa Margarita*, 11 Cal. 2d at 540. Here, the assignment by the assessor of multiple parcel numbers, an act separate from any action taken by the landowner, cannot be used as evidence of the landowner's intent. A careful review of the cases on the issue of severance does not produce any cases in which the exclusive actions of a third party caused a severance of a riparian right. The courts have been careful to acknowledge the loss of a riparian right only when the parties' intent to sever or extinguish the right has been made clear. Both the State Board Staff Report and the County Counsel's Office has come to identical conclusions.

MATERIAL EXAMINED

As special counsel, and in connection with this letter, we have examined the following documents (collectively referred to as "Documents"):

1. Summary entitled "September Ranch Water Rights" provided by Jean Getchell on August 28, 2002.
2. State Board Order No. WR 95-10 (July 6, 1995).
3. *Save our Peninsula Committee v. Monterey County Board* (February 15, 2001 6th DCA) 01 C.D.O.S. 1412.
4. Abbreviated Abstract of Title for September Ranch, Monterey County, developed by PPC Land Consultants, dated October 14, 2002, through a title plant date of September 25, 2002 at 7:30 a.m.
5. State Board Decision No. 1632 (July 6, 1995).
6. Agreement between California-American Water Company and September Ranch Partners, dated August 24, 2000, recorded 9/21/2000 (Doc # 2000060374).
7. Amended Declaratory Judgment dated January 14, 1986 in *Hacienda Carmel Community Association et al. v. California American Water Company* (Monterey Case No. 79750).

8. Letter from Frances Farina to Bill Van Doke, State Board, dated December 2, 1998 re: Supplement to September Ranch Water Rights Complaint (w/ attachments).

9. Letter from Thomas Howard, SWRCB to Patricia Bernardi and Fran Farina dated January 22, 1999 re: Complaint by Bernardi and Farina against September Ranch.

10. Respondent September Ranch's Answer to Complaint by Bernardi and Farina (September 22, 1998) (w/ attachments).

11. Letter from Edward Anton, State Board, to Anthony Lombardo re Final Environmental Impact Report for the September Ranch Preliminary Subdivision Map and Vesting Tentative Map, dated May 8, 1998.

12. Memorandum of Office of County Counsel dated July 21, 1998 re: September Ranch, Effect of Assessor's Roll; Reservation of riparian rights (w/ attachments).

13. SWRCB Order Amending Decision 1632 and Order WR 95-10 (February 19, 1998).

As to questions of fact relevant to this letter, we have relied only upon our examination of the Documents identified herein, and we have made no independent investigation or verification of such factual matters, except where explicitly noted herein.

**ASSUMPTIONS, LIMITATIONS, MATTERS
OF RELIANCE, AND QUALIFICATIONS**

1. We make no conclusions regarding the physical availability of water in the Carmel River (including its underflow) for use on the September Ranch. That is a hydrologic question, not a legal one. As noted above, a riparian right simply entitles a landowner to a correlative or proportional share of water in the watercourse to be shared with other riparian water right holders after the rights of any senior appropriators are satisfied. As such, even a holder of a valid riparian right may find that there is insufficient water in the watercourse for the proposed

use. This situation may be further compounded by the fact that, as discussed above, we conclude that the riparian right associated with September Ranch has been subordinated to the pre-1914 appropriative rights held by the California-American Water Company.

2. We assume that the water found beneath the September Ranch is underflow of the Carmel River, not percolating groundwater. In California, in order for one to use subsurface water under a riparian right, the subsurface water must be underflow of a watercourse (or a separate underground watercourse flowing through known and definite channels). In the State Board's Order No. WR 95-10 (July 6, 1995), the Board found that the groundwater pumped by the California-American Water Company in the Carmel Valley was underflow of the Carmel River. That finding, however, was based upon uncontested testimony by an expert for the Monterey Peninsula Water Management District. Further, the State Board made no specific findings as to how far the underflow of the Carmel River extends before encountering the impermeable granitic and sedimentary rocks which mark the crossover to percolating groundwater. For purposes of our analysis we have assumed that September Ranch physically overlies the underflow of the Carmel River. However, as with the issue of water availability noted above, this is a hydrologic and geologic question, not a legal one, that should be answered by further investigation.

3. We make no conclusions regarding the adequacy of the quality of the water underlying the September Ranch for its intended purposes.

4. In regard to title documents for the September Ranch, we have relied exclusively upon the title work and documentation provided by PPC Land Consultants and have not made an independent examination of any other records or historical research. Further, we have relied on PPC Land Consultants' representations as to the location of any metes and bounds descriptions contained in the documents, the location of the property described in the documents on any maps, and the contents of any documents which were illegible.

5. This Memorandum does not purport to cover or render a conclusion as to the existence or non-existence of non-riparian water rights for the September Ranch, the ownership of the September Ranch or ownership of the riparian right associated therewith, compliance with the California Subdivision Map Act, the status of tax payments, the validity or effect of the deeds in the chain

of title, the authority of entities or persons executing the deeds, any liens, judgments, easements, deeds of trust, or encumbrances covering or affecting the September Ranch or any leases of the September Ranch.

6. We assume that both C.P. Huntington and the Pacific Improvement Company are predecessors-in-interest to the California-American Water Company, and that California-American Water Company has succeeded to all legal interests of its predecessors-in-interest in regard to water rights.

7. We are aware of a note in a lot book entitled "Report on water rights William Hatton to Pacific Improvement Company No. 14491, November 6, 1924." We have not been able to locate this document and as such do not know the effect it may have on the conclusions contained herein.

8. The foregoing conclusions are limited solely to the laws of the State of California.

9. This letter, and the conclusions contained herein, is further limited by the effect of bankruptcy, insolvency, moratorium, reorganization, or other similar laws on the validity, binding effect, and enforceability of the conveyance documents.

10. This letter is provided as of the date hereof based upon the documents noted. We have no duty or obligation to advise you or any third party of changes of law or fact that occur after the date hereof, even though such change may affect the legal analyses or conclusions herein.

11. This letter, and the conclusions contained herein, deals only with the specific legal issues it explicitly addresses and any express language concerning a particular legal issue does not address any other matters.

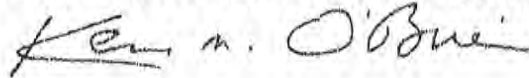
12. In our examination of the Documents, we have assumed the genuineness of all signatures, the legal capacity and authority of all natural persons signing the Documents, the authenticity of those Documents submitted to us as originals, the conformity to originals of those Documents submitted to us as copies, the authenticity of the originals of such copies, and the accuracy and completeness of the Documents. We further assume the execution and delivery of

Ms. Alana Knaster
Chief Assistant Planner
January 9, 2003
Page 15

the Documents were free from fraud, misrepresentation, mistake, duress, or criminal activity, none of which occurred insofar as we are aware.

Respectfully yours,

DOWNEY, BRAND, SEYMOUR & ROHWER LLP

A handwritten signature in black ink, appearing to read "Kevin M. O'Brien". The signature is fluid and cursive, with the first name "Kevin" written in a larger, more prominent script than the last name "O'Brien".

Kevin M. O'Brien
Scott L. Shapiro

cc: County Counsel, County of Monterey
Jason Brandman

RMM
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February 11, 2021

Via Electronic and U.S. Mail

Mary Israel, Planner
Monterey County Resource Management Agency
1441 Schilling Place
Salinas, CA 93901

IsraelM@co.monterey.ca.us

RE: Overview of Rancho Cañada Village water supply as discussed in the EIR
and the Applicant's decision to connect the Project to Cal-Am's water
system

Dear Ms. Israel,

On behalf of the project applicant, Rancho Cañada Venture, LLC (RCV), we provide the following overview of the history and status of the water supply and water usage for Rancho Cañada Village (Project). As discussed below, much of this information is found in the Second Revised Draft Environmental Impact Report (SRDEIR), which, in turn, is largely unchanged from the discussion in the 2016 Recirculated Draft EIR (RDEIR) and, to some extent, was also included in the 2008 Draft EIR.

Additionally, we provide some further explanation of RCV's decision to forego constructing a new water system for the Project, and to connect instead to the water system operated by the California American Water Company (Cal-Am). As discussed in our letter dated August 10, 2020, the SRDEIR (and the RDEIR) analyzed the environmental effects of connecting to Cal-Am's infrastructure as one of the options for providing water service to the Project. (See pages 15-17 of the attached August 10, 2020, letter from our firm to Carl Holm, submitted herewith as Exhibit A.) Thus, RCV's decision to proceed with the Cal-Am option does not constitute "significant new

information” warranting recirculation of the SRDEIR. (See CEQA Guidelines, § 15088.5.)¹

Brief history of water supply and use on the Project site

As stated in the SRDEIR, historical land uses on the property including the Project site has involved extracting water from onsite wells since approximately 1875. (See SRDEIR, p. 3.10-12.) Since 1969, the primary use of the water pumped from the onsite wells has been for golf course irrigation. (SRDEIR, p. 3.10-12.) Between 1991 and 2014, irrigation of the approximately 270-acre golf course has required between 309 and 522 acre feet per year (afa) of water, with an average of 409 afa. (SRDEIR, p. 3.10-7 [Table 3.10-3].) In 2016, the Trust for Public Lands (TPL) purchased the majority of golf course land. (SRDEIR, p. 3.10-14.) The remaining roughly 80 acres of former golf course land constitute the Project site. (SRDEIR, 3.10-14.)

As the SRDEIR explains, the County has recognized that RCV has riparian water rights because the Project site is adjacent to the Carmel River, though this right has never been formally adjudicated. Specifically, in 2002, as part of the environmental review process for an adjacent proposed development project that was formerly in common ownership with the RCV property, the County retained the law firm of Downey Brand LLP to independently review the riparian rights associated with that property. The chain of title for that property was identical to the chain of title for the RCV property as it relates to water rights documents/conveyances. The County accepted the law firm’s conclusion that valid riparian rights existed for the adjacent property, as such rights had not been “severed from the property formerly owned by the Hatton Family.” (SRDEIR, p. 3.10-12.) The same conclusion would apply to the RCV property. As the SRDEIR explains, “[t]he Rancho Cañada Village project site originates from the same chain of title of property formerly owned by the Hatton Family,” and thus has similarly firm riparian rights, noting that they are “likely have a priority superior to Cal-Am’s appropriative rights to the Carmel River and Carmel River underflow excluding Cal-Am’s right to extract from the Carmel Valley Basin under its pre-1914 appropriative water rights.” (*Id.* at p. 3.10-12.) Later, the SRDEIR states that “there does not appear to be any legal restriction to the Project Applicant’s use of up to 180 AFY for project purposes.” (*Id.* at p. 3.10-14.)

¹ The State CEQA Guidelines are located in title 14, division 6, chapter 3, of the California Code of Regulations, section 15000 et seq.

As the SRDEIR also explains, RCV and its predecessors in interest also believe that the water rights associated with the former golf course (including the Project site) include appropriative rights, both pre-1914 and post-1914 appropriative rights. In 1992, in order to prove the existence of these asserted water rights, RCV's predecessor applied to the State Water Resources Control Board (SWRCB) for 700 afa in appropriative water rights. This amount was later reduced to 545. (SRDEIR, p. 3.10-12.)² The need for a 545 afa appropriative right was based on irrigating the entire 270-acre golf course, parts of which, as discussed above, were sold to TPL (and have since been conveyed to the Monterey Peninsula Regional Park District [MPRPD]). RCV and TPL agreed prior to that conveyance that the 80-acre project site retained 180 afa of the overall property's riparian and appropriative water rights, which would be allocated to the RCV Project. (SRDEIR, p. 3.10-14.)

The application for the appropriative water right is still pending before the SWRCB. (SRDEIR, p. 3.10-12.) Importantly, however, water for the Project is not dependent on the pending appropriative rights application, as the Project water supply can be obtained through RCV's riparian rights, wheeled to Cal-Am. (See the attached March 30, 2018, letter from SWRCB (SWRCB letter) and the attached April 25, 2018, letter from Cal-Am (Cal-Am letter), Exhibits B and C submitted herewith.)

The options for water service analyzed in the SRDEIR

The SRDEIR, like the RDEIR before it, discloses that water would be supplied to the Project from one of two options: first, water could be supplied to the Project through an existing or a rehabilitated well (which would likely require the construction of an onsite treatment facility), requiring the Project to create its own water system; second, water could be supplied by exercising the Project's riparian right through the use of onsite wells to produce water for treatment at Cal-Am's offsite treatment facility and return to the Project site. (See SRDEIR, p. 3.10-29, 33.)³ Under either option, the Project's water

² The proposed appropriative water rights would have a priority date of April 22, 1992, and thus would be senior to any appropriative rights that would be granted in response to later-filed applications, such as one sought by the Monterey Peninsula Water Management District with respect to Los Padres Dam. (*Id.*)

³ In the revised discussion of water supply on page 3.10-29 of the SRDEIR there is a reference to Appendix H, which was attached to the Final EIR in 2016, but not included as an appendix to the SRDEIR. RCV requests that the County include Appendix H in the Second Final EIR (SFEIR) and we have submitted a copy of Appendix H to this letter as Exhibit D.

demand was estimated to be 180 afa, which includes 51.4 afa permanent instream dedication (i.e., water that would be assigned to the Project but would remain in the Carmel River Basin to benefit the river). (SRDEIR, p. 3.10-32.)

As we explained in an earlier letter dated August 10, 2020, RCV's preferred water service strategy is to have Cal-Am serve the Project, as opposed to RCV building its own water system. As noted above, RCV could use its riparian rights under either option. (See SWRCB letter and Cal-Am letter). RCV's intention to connect to the Cal-Am system is consistent with recent changes in State law directing that, where possible, new development be served by Public Utilities or large municipal systems as opposed to small stand-alone systems.

SWRCB's approval of the Project's connection to Cal-Am's water system

In 2018, RCV contacted SWRCB and explained the Project's proposed connection to Cal-Am's water system, including the assignment (or "wheeling") of a portion of the Project site's water rights to Cal-Am from either an existing or replacement well, and the proposed instream dedication. (See SWRCB letter.) Recognizing the environmental benefits associated with the Project, including the net reduction in water diversion from the Carmel River, the instream dedication, and a forbearance of water diversion from 2016 to 2021 that RCV, TPL, and others agreed to, SWRCB determined that connecting to Cal-Am's water system as proposed by the Project would not violate the 2009 order. (See SWRCB letter, pp. 2-3; see also SRDEIR, pp. 3.10-28 through -36.) The SWRCB letter also acknowledged without objection the Project's claim of 180 afa, as agreed to between TPL and RCV. (SWRCB letter, p. 2.)

After RCV informed Cal-Am of SWRCB's determination, Cal-Am issued a "will serve" letter to RCV stating that it would provide water service to the Project, subject to a wheeling agreement, and compliance with applicable rules and laws. (See the attached April 25, 2018, letter from Cal-Am (Cal-Am letter).) In conversations between RCV and Cal-Am, both have agreed that Cal-Am would drill a replacement well instead of drawing water from the existing well on the Project site. (See pages 15-17 of Exhibit A submitted herewith [the attached August 10, 2020, letter from our firm to Carl Holm].) Additionally, the site plan provided by RCV for Alternative 5 on January 11, 2021, depicts the location of the alternative well site that Cal-Am has selected for the replacement well. (See page 1 of the attached Vesting Tentative Map for Alternative 5 ["Well #1 Parcel"], submitted herewith as Exhibit E.) As stated in our August 10, 2020, letter to Carl Holm and depicted in the site plan for Alternative 5, the alternative well site

is located just to the west of the upper part of Parcel 8. Lastly, as explained in our August 10, 2020, letter, because the SRDEIR evaluated the environmental worst-case scenario, including the disturbance of the entire site during Project grading, and the construction of a water treatment facility, all the environmental effects of drilling a replacement well were analyzed and, if necessary, mitigated in the SRDEIR.

Current Water Usage on the Project Site for Cattle Grazing

Finally, RCV wants to address the current amount of well water being used on the Project site, since the issue was raised in a comment on the SRDEIR. The number is essentially zero. Since operation of the golf course ceased, the majority of the Project site (approximately 60 acres) has been used for cattle grazing. (See SRDEIR, p. 5-10.) In recent years, however, RCV has not used its well to irrigate the site to maintain grasses for cattle using the site. RCV has foregone such irrigation under the terms of the "forbearance agreement" mentioned on page 2 of the above-referenced SWRCB letter ("[u]nder a forbearance agreement with Cal-Am, the Rancho Canada properties have ceased using the riparian water claim for the past three years, adding approximately 300 afa of water to the Carmel River that would otherwise have been consumptively used"). In the absence of such irrigation, RCV has cattle on the Project site only seasonably (seven or eight months out of the year), so that the cattle may subsist on grasses sustained only by rainfall, with small amounts of additional water imported by truck.

Although the current well water usage on the property is essentially zero, use of well water could increase up to 180 afa under a scenario in which the County denies the Project, the forbearance agreement expires, and RCV chooses to graze cattle year-round on the site. Such a future scenario is more theoretical than likely, however. Should the County deny the Project, RCV will likely pursue a hotel on the Project site.

Conclusion

As explained above and in the SRDEIR, there is adequate riparian water to serve the Project. Because the SRDEIR conservatively analyzes the worst-case environmental effects of all these options, RCV's decision to connect to Cal-Am's water system and to

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Mary Israel
Monterey County Resource Management Agency
February 11, 2021
Page 6

wheel RCV's riparian water rights through Cal-Am's system by developing a replacement well does not require recirculation of the SRDEIR. Additionally, SWRCB has endorsed the approach selected by RCV, due to the several beneficial uses of water proposed as part of the Project.

Please let us know if you have any questions.

Very truly yours,



James G. Moose



Nathan O. George

Cc: Planning Commission
Board of Supervisors
Wendy Strimling
Alan Williams

Enclosures