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November 20, 2003

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Board of Directors
Monterey Peninsula Water Management District
5 Harris Court, Bldg. G
Monterey, CA 93942-0085

Re: Proposed Ordinance 109 Amending Ordinance 39

Members of the Board:

Ordinance 109 needs to allow more time to respond to MPWMD proceedings in the event of an interruption in recycled water supply, and should provide a time certain for starting construction on the Phase II project. In addition, the conditions and restrictions proposed for buyers appear sufficiently onerous and unworkable that the feasibility of the project may be impaired as a result.

The recycled water project to date has provided measurable, significant benefits for the public by reducing the amount of potable water used for golf course irrigation. That public benefit, however, has come at a significant cost to the recycled water users, at variance with MPWMD's commitments under its contracts with the recycled water users. Ordinance 109 is seen as an important foundational step in physical, operational and legal enhancements to enable MPWMD to meet its contractual commitments.

IRWUG remains prepared to modify and resolve existing contractual and legal commitments in the context of an enhanced project and adequate safeguards against damaging interruptions in water supply. The public interest requires fairness for all concerned and procedural safeguards against precipitous or arbitrary regulatory action to deprive users of water during an interruption in the recycled water supply. IRWUG believes that Section 4.F can meet this standard if all interested persons receive not less than 30 days written notice of a hearing by MPWMD after MPWMD reasonably determines to hold a hearing. Also, based upon IRWUG's experience, the proposed 14-day time to prepare for a hearing, even if retained in the Ordinance, cannot realistically be met in practice, and will impose an unrealistic burden on the water users and deny them due process. It is not good

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public policy to impose an unrealistic requirement that will in practice deny participation in a process to the persons whose contractual and property rights are directly affected.

Accordingly, we request that Section 4.F.3 be revised to read as follows:

"3. If potable water usage continues for longer than 14 days within a 30-day period, MPWMD, upon making a reasonable, written determination that the interruption of recycled water may continue beyond the time reasonably required by the exercise of due diligence to remedy the interruption, may hold a hearing to determine what quantities of potable water shall continue to be supplied for irrigation of the affected Recycled Water Irrigation Area(s). MPWMD shall give CAWD, PBCSD, Cal-Am and the owners of each affected Recycled Water Irrigation Area not less than 14 30 days written notice for such hearing. Upon rendering its determination of what quantities of potable water shall continue to be supplied for irrigation of the affected Recycled Water Irrigation Area(s), MPWMD shall give CAWD, PBCSD, Cal-Am and the owners of the affected Recycled Water Irrigation Area(s) not less than 10 days written notice of any hearing determination, and the determination shall take effect on the 11th day following service of the notice by personal delivery or by facsimile, or on the 16th day following service of the notice by mail."

A time certain for beginning construction is likewise material to IRWUG changing its position in reliance on Ordinance 109 and the concomitant agreements. IRWUG prefers that Ordinance 109 require construction to begin within 24 months of the effective date of Ordinance 109. If the ordinance does not enact this provision explicitly, it necessarily will be an element of the negotiations for the agreements that are required for Ordinance 109 to become effective.

Finally, IRWUG is concerned about the ultimate successful completion of the project. IRWUG recognizes that the financial underpinning of the project rests on the sale of Pebble Beach Company's water entitlements. It is IRWUG's observation that the conditions of sale requiring deed restrictions and public access to water use records constitutes a significant hurdle for potential buyers. This is true for all buyers, but especially true for buyers who are intending to incrementally add to their existing water entitlements. There appears to be no process whereby the water obtained by a buyer of Pebble Beach Company's entitlement can be distinguished uniquely from the buyer's existing water rights. This cloud of uncertainty and discrimination may well make the overall project infeasible. We urge the District to revisit these proposed restrictions and conditions.

Please feel free to contact the undersigned if further detail is desired.

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Sincerely,

NOLAND, HAMERLY, ETIENNE & HOSS
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Lloyd W. Lowrey, Jr.

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