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June 22, 2006

TO: Andrew M. Bell, District Engineer

FROM: David C. Laredo, District Counsel 

RE: Water Rights Relating to Sand City Desalination Projects

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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 Basin<sup>1</sup>.

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

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<sup>1</sup> 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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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