

**EXHIBIT 11-B****De LAY & LAREDO**

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September 11, 2006

Michael W. Stamp  
479 Pacific Street, Suite 1  
Monterey, CA 93940

Re: CEQA Concerns Regarding MPMWD Ordinance 125

Dear Mr. Stamp:

During the August 21, 2006 discussion of its proposed Ordinance 125, the Monterey Peninsula Water Management District Board requested an analysis of CEQA issues presented by you and the City of Monterey. The Board also directed modification be made to the proposed ordinance, and deferred action on second reading of Ordinance 125 to the September, 2006 meeting to review those changes. This letter transmits our analysis of proposed Ordinance 125, as revised.

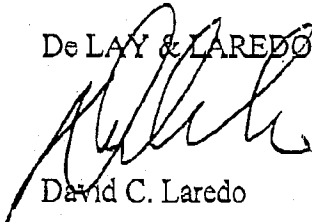
Among other modifications, the Board directed that all changes to Rule 28 B be deleted from the ordinance. During the August meeting, representatives for the City of Monterey stated concurrence with this modification. I called your office following that meeting to confirm whether this revision to Ordinance 125 would satisfy your concerns, but have not as yet received a reply. Please let me know if these changes fail to satisfy your concerns.

As to other matters stated in your letter, the attached memo addresses those concerns as well. It is our assessment that no basis remains to contest the District's reliance upon a negative declaration with respect to proposed Ordinance 125. The Board-directed modifications to proposed Ordinance 125 appear to obviate the concerns of your clients.

Should you have any question relating to this matter, do not hesitate to contact me.

Sincerely,

De LAY & LAREDO



David C. Laredo

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September 11, 2006

TO: Chairwoman Knight, Board Members, & General Manager

FROM: David C. Laredo

RE: Analysis of CEQA Issues Raised in Reference to Ord. 125

Several California Environmental Quality Act (CEQA) issues were raised by members of the public in reference to the second reading of proposed Ordinance 125 on August 21, 2006. During discussion of the proposed ordinance, the Board requested a written analysis of those issues to amplify the oral review provided by counsel during the meeting. The board deferred action on second reading of Ordinance 125 to its September, 2006 meeting.

In particular, the City of Monterey noted its opinion (letter of 8/14/2006, at page 183 of the August 21 meeting packet) that any modification to Rule 28 B (water credit transfers) would require analysis by a full environmental impact report (EIR) as potential negative impacts might result from "disincentives for water conservation." Michael Stamp, on behalf of Patricia Bernardi, Save Our Carmel River and The Open Monterey Project, also objected (letter of 8/21/2006, distributed during the meeting of August 21; hereafter "Stamp letter") to approval of Ordinance 125 in reliance on a negative declaration. Mr. Stamp asserted a "fair argument" could be made that the ordinance "will have an effect on the environment." Mr. Stamp stated, "My clients join with the City of Monterey in urging you to require an Environmental Impact Report due to the substantial impacts that may result from this ordinance."

Upon advice of counsel and staff, the Board on August 21, 2006 directed that proposed Ordinance 125 be revised to delete any modification to Rule 28 B. The Board seeks clarification as to whether these changes satisfy the stated concerns of the City of Monterey and Mr. Stamp's clients. During the meeting, representatives for the City of Monterey stated their concurrence with staff and counsel's proposed modification. It appears the revised version of Ordinance 125 to be presented to the Board fully satisfies CEQA concerns as stated by the City.

Analysis of Mr. Stamp's stated concerns is a bit more complex. District General Counsel did inform Mr. Stamp of modifications proposed to Ordinance 125, but to date he has not communicated any clarification or revision of his concerns. Accordingly, the following assessment of those stated concerns is provided for your review.

Mr. Stamp states that his clients "join with the City of Monterey" with reference to Rule 28 B (water credit transfers) issues. The Board's directed modification to this Rule will in effect adopt the "no-project" alternative respecting that issue; that is, no change whatsoever shall be made by Ordinance 125 to the District's water credit transfer process. No change is proposed to the words or definitions previously used to govern water credit transfers. This choice appears to satisfy

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concerns stated by the City of Monterey. It also addresses the stated interests of Mr. Stamp's clients. No basis remains to contest the District's reliance upon a negative declaration with respect to Ordinance 125 or existing Rule 28 B.

Mr. Stamp comments at several places that the "proposed ordinance is 81 pages long." (Stamp letter, p. 1) and based thereon asks that the "District separate the proposed 81-page ordinance into separate subject areas that address different categories of changes." (Stamp letter, p. 4). We disagree. CEQA discourages "piecemealing." CEQA Guidelines section 15003 (h) provides that a lead agency is to consider "the whole of an action, not simply its constituent parts." Curiously, the Stamp Letter itself references the "piecemealing" as a basis to object to a water credit transfer recommendation propounded by the Water Demand Committee (since obviated by the Board decision not to modify Rule 28 B). Mr. Stamp stated, "The proposed [water credit transfer] recommendation... is piecemealing. The District should look at all contemplated changes to the water credit transfer program in a single comprehensive environmental review." (Id., p. 5).

The Stamp letter noted that the proposed Ordinance incorporated different text and font styles ("The proposed ordinance is confusing because it does not state what the non-italicized text in bold means.") The September 2006 revision to Ordinance 125 shall correct typographic and font errors that may have caused confusion, and the staff note shall clarify the effect and purpose of the ordinance. These modifications should satisfy concerns stated by Mr. Stamp.

Mr. Stamp comments that definitions afforded the terms "governmental," "governmental use," "public," and "public authority" are confusing and overly broad. We disagree. Further, these definitions are used solely in the context of determining water use capacity, and by the provisions of Rule 24 E (3), set forth at page 141 of the August 21 meeting packet, this water use capacity is determined "based upon the actual average annual water use record following 60 months of occupancy." Actual water use shall determine water capacity for these projects; these defined terms do not cause an effect on the environment. Further, these terms are not modified by Ordinance 125. Even assuming, arguendo, the definitions lack precision, this alleged defect cannot result in erroneous water use; the concern does not constitute a defect under CEQA.

Mr. Stamp further addresses another definitional concern, asserting the word "jurisdiction" is not defined. Mr. Stamp errs in this assertion. The term "jurisdiction" is defined in existing Rule 11; that definition is not proposed to be changed by Ordinance 125. No CEQA analysis is required regarding this point.

Mr. Stamp comments that the proposed ordinance would "take approval authority away from the Board of Directors and allow the General Manager to give such approvals..." This is not accurate. The permit approval process set forth in Ordinance 125 is that which exists today. Further, Mr. Stamp's assertion that this "modification" removes the approval from the CEQA process is logically flawed; the District provides open and public notice of any final decision of the General Manager (both by posting at the District and on the District's website) and members

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of the public have an opportunity to appeal those decisions to the Board of Directors pursuant to Rule 70.

The Stamp letter next states concerns related to categories denominated "Temporary" and "Conditional" water permits. He erroneously characterizes these as "proposed new permits." However, existing Rule 23 B allows "Temporary Expansion/Extension Permits" when these are needed reasonably to satisfy near-term water needs. Each such permit is subject to revocation during its use, without cause, with only thirty (30) days notice. Similarly, existing Rule 23 D allows Conditional Water Permits under restricted circumstances with the jurisdiction's endorsement. These permits apply solely to large commercial projects, governmental projects, and projects associated with complex financial underwriting. These processes are not new. No CEQA analysis is required regarding either of these processes.

Similar statements of concern regarding the establishment of jurisdictional allocations (Stamp letter, p. 4) are misplaced. He misstates the process, and apparently is unaware that the procedure not only pre-exists, but is not modified by Ordinance 125. No CEQA analysis is required regarding this point.

Finally, Mr. Stamp expresses concern regarding projects that use water in conjunction with manufacturing. This manufacturing definition relates to the manner in which water use capacity is determined. Manufacturing water use is based upon the actual average annual water use record. This provision of the water capacity rules is not proposed to change; the rules about which Mr. Stamp complains pre-exists the rules proposed for modification in Ordinance 125. No CEQA analysis is required regarding this point.

For these reasons, it appears that the Board-directed modifications to proposed Ordinance 125 obviate the substantive concerns of both the City of Monterey and Mr. Stamp. The alleged remaining issues do not present CEQA defects, and for the most part address text passages that are not proposed to be amended by Ordinance 125.

Should you have any question relating to this matter, do not hesitate to contact me.

Sincerely,

De LAY & LAREDO

David C. Laredo