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TO: Mayor Pendergrass, Board Members, General Manager
FROM: David C. Laredo, General Counsel
RE: Comments on the Sand City Entitlement Concept Ordinance

This memo provides comments on the draft concept ordinance that would establish a Water Entitlement for Sand City in connection with the City's desalination project. Although my office has reviewed and caused revision to the concept draft originally proposed by the City Attorney for the City of Sand City, it is to be emphasized that the draft ordinance reflects substantive policy choices as presented by the City of Sand City.

This memo identifies policy considerations not addressed in the concept draft ordinance that require Board consideration.

This limitation may be significant. A finding of Material Injury could impair the function and productivity of the Sand City Desalination Facility. The concept draft ordinance does not address this issue.

B. The Project May Not Stay Municipally Owned or Operational

Finding 6 recites, "The Project includes the construction of a municipally owned desalination

in the ordinance to maintain the facility in municipal ownership or to keep it operational. In fact, the City's Application states the Cal-Am System supplies emergency water in case of system failure (Application Answer to Question 12, page 2).

F. Location of Desalinated Water Use

It should be noted that Sand City represented to the State Water Resources Control Board (SWRCB) that the 300 AFY purchased by CAW "will then reduce pumping from the Carmel River by a like amount" at least temporarily. Finding 18 states diversions will be reduced from the Carmel River and the Seaside Groundwater Basin to reduce "CAW's current reliance on its existing sources of water supply." It continues with, "The Project will provide an immediate benefit to the environment by allowing a 300 acre-foot per Water Year reduction of demand on existing sources of water supply for the CAW System at the time the Project becomes operational." The extent to which project water shall address Seaside Basin overdraft or Carmel River extractions should be clarified.

G. Accounting for 94 AF

Finding 18 states the Project provides "permanent reduction of 94 acre-feet of water which is equal to the amount of water supplied to the Sand City Sites by the CAW System during the most recent completed Water Year." There does not appear to be any accounting for the "94 acre-feet of water" from a system perspective. It is unclear how the water currently used by the City is proposed to be "permanently reduced."

II. Section Two: Purpose

A. Purpose

From the District's perspective, a key reason to support the Sand City Desalination Facility is that the project shall cause a temporary increase CAW's water supply and allow Carmel River and Seaside Basin extractions to be reduced.

C. Sale of Water Entitlement for Valuable Consideration

The concept ordinance allows Sand City to convey its entitlement "for valuable consideration" without limitation. The original Pebble Beach agreement afforded each Fiscal Sponsor a specific Water Entitlement in return for accepting the obligation to underwrite that project. The second Pebble Beach agreement authorized the Pebble Beach Company to sell a portion of its Water Entitlement to pay for costs to expand the project. Limits were placed on the quantity of entitlement that could be sold and the time period during which the entitlement could be sold. Capital costs associated with that project were known. This ordinance does not include those parameters to limit the sales price.

to Victoria A. Whitney, SWRCB, dated December 12, 2005 that characterizes the project. Cal-Am's letter indicated water created by the desalination facility "will be made available for use in the Sand City Redevelopment Area only over the remaining life of the Redevelopment Plan (approximately 25 years)." As drafted, the entitlement is to last for 75 years but be used for development expectations within 25 years. This apparent inconsistency should be reconciled in the draft ordinance

Section A provides that 300 AFA of potable water is to go to California American Water "for so long as the Sand City Water Entitlement continues". This period is defined as extending to December 31, 2082. In contrast, the CAWD/PBCSD reclamation project Water Entitlement requires the fiscal sponsor to pay all capital costs, operating deficiencies, differential costs and maintain other financial guarantees for the life of that project. The concept draft does not place a similar obligation upon Sand City.

Conclusion

The Board should provide policy direction to resolve the substantive issues identified above in order to set this matter for enactment.

David C. Laredo
General Counsel

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