

Submitted at
November 8, 2007
Rules & Regulations
Review Committee
Meeting

MEMORANDUM

From: City of Sand City
To: Monterey Peninsula Water Management District
Rules and Regulations Review Committee
Re: MPWMD Concept Ordinance Regarding Sand City Water Supply
Project
Date: November 8, 2007

The following memorandum responds to the policy issues discussed in the General Manager's staff report dated November 8, 2007.

1. [Memo IA] Finding #4 of the Concept Ordinance recognizes Sand City's right to brackish water. However, the Seaside Basin Adjudication judgment states that production from the Aromas Sands Formation may occur "so long as such Production does not cause a Material Injury," and enables the Watermaster to curtail extractions.

Policy Question: *Should language be added to the ordinance to address the situation where production could be limited in order to comply with the Adjudication decision? This is also relevant to questions about long-term system failures (see below).*

Staff Conclusion: *Include in ordinance; this policy item directly relates to project source of supply that is addressed in the Seaside Basin adjudication, which the District references in its regulation of CAW water resource supply planning and budgeting.*

Sand City Response: *Sand City agrees with the staff recommendation. Sand City suggests revising paragraph A of Section Three of the ordinance to read in its entirety as follows:*

"There is hereby established the Sand City Water Entitlement which confers upon Sand City a vested property right to take up to 206 acre-feet per Water Year of Potable water from the CAW System. For so long as the Sand City Water entitlement continues: (i) Sand City shall own the Sand City Desalination Facility; (ii) Sand City shall cause the Sand City Desalination Facility to produce 300 acre-feet of Potable water per Water Year; (iii) Sand City shall cause 300 acre-feet of Potable water per Water Year to be delivered to the CAW System through a single connection as permitted by the District; and, (iv) CAW shall continue to accept delivery from the Sand City Desalination Facility of 300 acre-feet of Potable water per Water Year through a single connection as permitted by the District. The Sand City Water Entitlement shall continue for a period of seventy-five (75) years unless sooner abandoned by the persons or entities holding all or a portion

of the Sand City Water Entitlement. Such persons may only abandon their interests in the Sand City Water Entitlement upon demonstration, to the satisfaction of the District or its successor, that sufficient water is available from other sources of supply to replace the Sand City Water Entitlement.”

2. [Memo IB] Ordinance 109 requires CAWD/PBCSD to maintain public ownership and to keep the plant operational. Concept Ordinance Finding #6 refers to public ownership but does not require the City to maintain public ownership of the plant, or to keep it operational (*see two additional questions related to this issue immediately below*).

Policy Question: *Should text be added to the ordinance to require the City of Sand City to maintain public ownership of the desalination plant?*

Staff Conclusion: Include in ordinance for similar reasons as stated in Item 1 above.

Sand City Response: Sand City agrees with the staff recommendation. See clause (i) of the revised paragraph A of Section Three, above.

3. [Memo IB] The Ordinance 109 entitlement was granted pursuant to a guaranteed fiscal sponsorship to ensure a viable reclamation project. The Concept Ordinance does not include a requirement that the City guarantees or ensures that the plant is maintained in good operating condition to be able to reliably produce 300 AFY. It is noted that Condition #3 and Special Condition #28 of the approved MPWMD WDS permits for the City and CAW state that the 206 AFY Entitlement is valid only so long as the plant is fully operational and properly maintained to be able to produce 300 AFY of potable supply acceptable to CAW.

Policy Question: *Should language be added to the ordinance to require a guaranteed fiscal sponsorship to ensure long-term viability of the plant?*

Staff Conclusion: Don't include in ordinance; Sand City and CAW WDS permit Conditions #3 and #28 requirements are adequate to ensure District's regulatory function is carried out.

Sand City Response: Clause (ii) of the revised paragraph A of Section Three, above, mimics the requirements of Condition #3 and Special Condition #28 of the approved MPWMD WDS permits for the City and CAW.

4. [Memo IB] Ordinance No. 109 specifies the definition of a service “interruption” and what happens in a short-term or long-term failure of the reclamation project. It describes how long being off-line is acceptable and the process to address system failure. The Concept Ordinance does not include any information about short-term or longer-term system failure, including the situation where less than 300 AFY is actually able to be produced over the long-term, for whatever reason.

Policy Question: *Should text be added to the ordinance to address emergency short-term and long-term system failures, including replacement sources of supply?*

Staff Conclusion: Don't include in ordinance for similar reasons as stated above.

Sand City Response: Sand City agrees with the staff recommendation.

5. [Memo IC] Ordinance 109 allowed 380 AFY out of 800 AFY potential reclamation savings to be used for new water use by the fiscal sponsor, or less than half. Concept Ordinance Finding #10 includes 206 AFY for new uses, which is about two-thirds of the 300 AFY production amount.

Policy Question: *Is the ratio of entitlement to plant production acceptable?*

Staff Conclusion: Don't include in ordinance; the 50% ratio in Ordinance 39 was needed to attract fiscal sponsorship of CAWD/PBCSD project; there is no such requirement in this instance as City is SCWSP fiscal sponsor using RDA, Prop. 50 and other financing tools.

Sand City Response: Sand City agrees with the staff recommendation.

6. [Memo ID] Concept Ordinance Finding #11 states that the Water Entitlement is separate and distinct from the City's Allocation and "won't affect any future Allocation to the City."

Policy Suggestion: *The Board should confirm this separation.*

Staff Conclusion: Include in ordinance; this is a relevant and useful clarification.

Sand City Response: Sand City agrees with the staff recommendation. Sand City believes this issue is resolved by language presently found at paragraph C of Section Three of the ordinance.

7. [Memo IE] Ordinance 109 specified the cost of the Reclamation Project and who is responsible for paying for it. The Concept Ordinance does not include this type of information.

Policy Question: *Should text be added to the ordinance to address project costs, cost of water and who is responsible for payment (see specific questions in memo)?*

Staff Conclusion: Don't include in ordinance; see Item 5 rationale above.

Sand City Response: Sand City agrees with the staff recommendation.

8. [Memo IF] Concept Ordinance Finding #18 notes near-term benefits to the Carmel River and Seaside Basins; earlier communications by the City to the SWRCB infer that benefits would be solely for the Carmel River. District technical staff notes that desalinated water would enter the CAW system and quickly be integrated with other sources, similar to one electrical source entering the power grid. Thus, one cannot designate specifically where the desalinated water would travel. However, similar to the District's Phase 1 Aquifer Storage and Recovery (ASR) Project, indirect benefits occur to the Carmel River and Seaside Coastal Sub areas due to the presence of the desalinated water source, because fewer acre-feet would need to be extracted from wells to meet the same demand. Importantly, MPWMD, CAW and state and federal resource agencies meet quarterly to develop a strategy to address community and environmental

needs for the upcoming 3-month period, which includes all CAW production sources.

Policy Question: *Should text be added to the ordinance to clarify project benefits to the two primary components of the CAW water resource?*

Staff Conclusion: Don't include in ordinance; clarification is unnecessary, based on facts described immediately above.

Sand City Response: Sand City agrees with the staff recommendation.

9. [Memo IG] Concept Ordinance Finding #18 refers to a "permanent reduction" of 94 AFY, the City's CAW water consumption in water year 2006. It is unclear how water currently used by the City would be permanently reduced.

Policy Question: *Should text for Finding #18 be amended to more accurately describe what the 94 AFY amount represents?*

Staff Conclusion: Include in ordinance; this is a factual clarification, and the policy issue is directly related to the basis of the proposed SCWSP water entitlement.

Sand City Response: Sand City agrees with the staff recommendation. The revised paragraph A of Section Three above clearly requires Sand City to produce and deliver 300 AFY to the CAW system. However, the total amount of water available for new or expanded uses in Sand City under that paragraph is 206 AFY. The difference, 94 AFY, is the amount of the permanent reduction in demand on CAW's present sources of supply.

10. [Memo IIA] The purpose of the Concept Ordinance refers to resource benefits but does not spell out potential benefits to the Carmel River and Seaside Basins.

Policy Question: *Should text for Section Two, Purpose, be amended to emphasize benefits to the Carmel River and Seaside Basins due to reduced extractions?*

Staff Conclusion: Include in ordinance; same as Item 9 rationale.

Sand City Response: Sand City agrees with the staff recommendation. Sand City suggests revising Finding #18 of the ordinance to read in its entirety as follows:

"It is in the public interest to reduce the amount of water diverted from the Carmel River and taken from the Seaside Groundwater Basin by California American Water. The Project will have the environmentally beneficial effect of reducing CAW's current reliance on its existing sources of water supply. 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 Sand City Water Entitlement allows a maximum of 206 acre-feet per Water Year to be taken out of the CAW System for new and expanded uses on the Sand City Sites. The remaining 94 acre-feet will be permanently added to CAW's System by the Sand City Desalination Facility and thereby result in a permanent 94 acre-foot

reduction in pumping demand on the Carmel River and/or the Seaside Groundwater Basin.”

11. [Memo IIC] The Pebble Beach agreements provided a specific water entitlement in exchange for fiscal sponsorship, and placed limits on the quantity of entitlement that could be sold within a specific time frame. For the Reclamation Project, project costs that exceed CAW’s cost of potable water are paid by the project sponsor. The Concept Ordinance allows the City to convey its entitlement “for valuable consideration” without limitation.

Policy Question: *Should text for Section Two, Purpose, be amended to include limits on the timing of the sale of entitlements to Sand City Sites, and relate “valuable consideration” to the project cost?*

Staff Conclusion: *Don’t include in ordinance; Ordinance 109 financing source was unique to the expanded recycled water project cost.*

Sand City Response: *Sand City agrees with the staff recommendation.*

12. [Memo IIIA] The Concept Ordinance establishes a 75-year life for the entitlement through December 21, 2082. This appears to be inconsistent with a 25-year remaining life of the City’s Redevelopment Plan described in other documents. Long-term fiscal obligations by Sand City over the life of the project are not included.

Policy Question: *Should text in Section Three, Rule 23.6, be amended to clarify the project life and financial obligations during that period?*

Staff Conclusion: *Don’t include in ordinance; there is no policy correlation between RDA “life” and water entitlement duration; Ordinance 39 and 109 potable entitlements have no time limit, incidentally.*

Sand City Response: *Sand City agrees with the staff recommendation.*