



RECEIVED

AUG 15 2008

MPWMD

ERIC N. ROBINSON  
erobinson@kmtg.com

August 15, 2008

**VIA ELECTRONIC MAIL & PERSONAL DELIVERY**

Board of Directors  
Monterey Peninsula Water Management District  
P.O. Box 85  
Monterey, CA 93942-0085

Re: Request for Clarification of Ordinance No. 134 and Ordinance No. 135

Dear Board Members:

This letter requests a modification to proposed Ordinance No. 134<sup>1</sup> and to proposed Ordinance No. 135.<sup>2</sup> The modification is needed to clarify the two ordinances and to avoid conflict with the Final Judgment and Amended Decision in the Seaside Basin Groundwater Adjudication, *California American Water Company v. City of Seaside, et al.*, Monterey County Superior Court Case No. M66343.

Recent versions of the ordinances have used the term "superior, unimpaired water rights" in describing how water use reductions are to be phased in and allocated among the various types of water uses that these ordinances address. That term recognizes the need for MPWMD's proposed water use reduction and rationing regime to be consistent with California water rights law and, more specifically, with the groundwater rights adjudicated by the Superior Court in the Amended Decision and Final Judgment. Whether or not the specific term "superior, unimpaired water rights" is ultimately included in the final ordinance language proposed for adoption, any water use reduction and rationing ordinance that the District ends up adopting must be consistent with the Seaside Basin groundwater rights adjudicated by the Superior Court.

---

<sup>1</sup> Our comment on Ordinance No. 134 is based on a revised Ordinance No. 134 labeled as "First Reading Draft, July 21, 2008," available on the District's website at [http://www.mpwmd.dst.ca.us/asd/board/boardpacket/2008/20080721/16/item16\\_exh16a.htm](http://www.mpwmd.dst.ca.us/asd/board/boardpacket/2008/20080721/16/item16_exh16a.htm), accessed on August 6, 2008.

<sup>2</sup> Our comment on Ordinance No. 135 is based on the version labeled as "Draft Urgency Ordinance, Ordinance No. 135," available on the District's website at [http://www.mpwmd.dst.ca.us/wdd/waterdemandcommittee/2008/20080805/02/item2\\_exh2a.htm](http://www.mpwmd.dst.ca.us/wdd/waterdemandcommittee/2008/20080805/02/item2_exh2a.htm), accessed on August 6, 2008.

The Amended Decision and Final judgment recognize two types of groundwater rights in the Seaside Groundwater Basin—Alternative Production Allocations and Standard Production Allocations. The Amended Decision and Final Judgment determined that parties awarded Alternative Production Allocations hold “a prior and paramount right over those Parties Producing under the Standard Production Allocation.” Amended Decision, Section III.B.2.

The water use reductions to be carried out under Ordinance 134 and Ordinance 135 must be consistent with the Amended Decision and Final Judgment. To ensure that is the case and thereby avoid any future confusion, the term “superior, unimpaired water rights” should be retained in the ordinances and the following sentence should be added to both ordinances’ description of the “trigger” for water rationing under stages 4 through 7, in Rule 164.B.1, Rule 165.B.1, Rule 166.B.1, and Rule 167.B.1:

Alternative Production Allocations resulting from the Amended Decision and Final Judgment in *California American Water Company v. City of Seaside, et al.*, Monterey County Superior Court Case No. M66343, are superior, unimpaired water rights.

Alternative Production Allocations exist in both the Coastal Subarea and in the Laguna Seca Subarea of the Seaside Groundwater Basin, so *both* ordinances should include the proposed clarification.

Ordinance 134 already at one point expressly acknowledged riparian water rights and how they may be proven in the course of implementing Ordinance 134’s water use reductions. Alternative Production Allocations already are “proven” by the Court’s Amended Decision and Final Judgment and, therefore, must be expressly acknowledged by both ordinances.

We have discussed the need for the preceding clarification with the District’s general manager, Darby Fuerst, and general counsel, David Laredo, starting in May 2008 and have received repeated assurances that the intent of Ordinance 134 and Ordinance 135 is to include Alternative Production Allocations within the meaning of the “superior, unimpaired rights” mentioned in these ordinances.

We respectfully request that the District follow through on those assurances by adding the language proposed above or by adding other language that expressly states that “superior, unimpaired rights” include, but are not limited to, Alternative Production Allocations.

Board of Directors  
Monterey Peninsula Water Management District  
August 15, 2008  
Page 3

11279.002

Although this request is presented by holders of Alternative Production Allocations in the Laguna Seca Subarea,<sup>3</sup> the need for and benefit of making the proposed clarification apply with equal force throughout the entire Seaside Basin.<sup>4</sup> We thank you for your attention to this important matter.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Law Corporation



Eric N. Robinson

SCP

cc: Darby Fuerst (MPWMD)  
David Laredo (MPWMD)  
Vid Prabhakaran (counsel for Pasadera County Club)  
Elizabeth Gianola (counsel for York School)  
Virginia Hines (counsel for Laguna Seca Resort)

897998.1

---

<sup>3</sup> *I.e.*, York School, Pasadera County Club and Bishop, McIntosh & McIntosh. The County of Monterey also holds an Alternative Production Allocation for the Laguna Seca County Park.

<sup>4</sup> Alternative Production Allocations for the Coastal Subarea are held by City of Seaside, Security National Guaranty, Muriel L. Calabrese Trust, Mission Memorial Park and City of Sand City.