

**COMMENT LETTERS RECEIVED ON
MONTEREY BAY SHORES ECORESORT PROJECT**

Received after production and distribution of the January 29, 2009 meeting packet

DATE	NAME	COMMENT
1/29/09	Sheri L. Damon Lombardo & Gilles	Letter outlining some of the key Seaside Adjudication provisions
1/29/09	Craig E. Anthony California American Water	Letter stating CAW will insure Seaside Wells will be operated year round to deliver water to project's parcel.
1/28/09	Ralph Rubio Mayor, City of Seaside	Letter of support for project, water conservation, water efficiency, storm management and recycle/graywater program systems
1/27/09	Chris Fitz LandWatch Monterey County	Letter stating a Subsequent Environmental Impact Report be prepared so that an adequate environmental document is available in order for the District to take discretionary action on the proposed project
1/26/09	Laurens Silver California Environmental Law Project	Letter containing Sierra Club's response to SNG's counsel's letter dated January 21, 2009 and the District's staff report
1/25/09	Mike Dawson	Letter of opposition
1/21/09	John Mayer	Letter of support for project, water conservation, water efficiency, storm management and recycle/graywater program systems
1/21/09	Kathy (last name illegible)	Letter of support for project, water conservation, water efficiency, storm management and recycle/graywater program systems
1/21/2009	Max Perelman	Letter of support for project, water conservation, water efficiency, storm management and recycle/graywater program systems
1/21/2009	Steve B. (last name illegible)	Letter of support for project, water conservation, and sustainable technologies
1/21/09	(author's name illegible)	Letter of support for project, water conservation, and sustainable technologies
1/21/09	Travis Selfridge	Two letters of support for project, water conservation, water efficiency, storm management and recycle/graywater program systems
1/21/09	Sarah Graham	Two letters of support for project, water conservation, water efficiency, storm management and recycle/graywater program systems
1/21/09	Tiffany Loia	Two letters of support for project, water conservation, water efficiency, storm management and recycle/graywater program systems

1/21/09	Monica Anderson	Two letters of support for project, water conservation, water efficiency, storm management and recycle/graywater program systems
1/21/09	George A. Spears	Two letters of support for project, water conservation, water efficiency, storm management and recycle/graywater program systems
1/21/09	Jim Bruno	Letter of support for project, water conservation, and sustainable technologies
1/21/09	Ashley Beleny	Letter of support for project, water conservation, and sustainable technologies
1/21/09	Warren Easton	Letter of support for project, water conservation, and sustainable technologies
1/13/09	Pat Regan	Letter of support for project, water conservation, water efficiency, storm management and recycle/graywater program systems

(25 letters)

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Anthony L. Lombardo
Jeffery R. Gilles

Dennis C. Beougher
Patrick S.M. Casey
Sheri L. Damon
E. Soren Diaz
J. Kenneth Gorman
Koren R. McWilliams
Paul Rovella
Bradley W. Sullivan
James W. Sullivan
Kelly McCarthy Sutherland

Virginia A. Hines
Of Counsel

Amy Purchase Reid
Of Counsel



318 Cayuga Street
P. O. Box 2119
Salinas, CA 93902-2119
831-754-2444 (SALINAS)
888-757-2444 (TOLL FREE)
831-754-2011 (FAX)
www.lomgill.com

225 Sixth Street
Hollister, CA 95023
831-630-9444

January 29, 2009

JAN 29 2009

VIA EMAIL

Kristina Anne Markey, Chair
Monterey Peninsula Water Management District
5 Harris Court, Bldg G
PO Box 85
Monterey, CA 93942

RE: Monterey Bay Shores Eco-Resort Water Distribution Permit

Dear Chair Markey and Members of the Board:

Because we have been hearing some comments (formal and informal) that suggest a misunderstanding of the 2006 Seaside Basin Adjudication and Final Decision and Judgment by the Monterey County Superior Court, we thought it would be helpful to the Water District and the board to have some additional information before them.

Therefore, this supplemental letter discusses some of the key Seaside Adjudication provisions. As the Water District staff is aware, the Adjudication is binding upon the District and addresses many, if not all, of the issues raised to date.

On October 23, 2008, the Water Master Board, which is authorized and appointed pursuant to the Monterey Court's Adjudication, reviewed the Monterey Bay Shores Eco-Resort's application for a water distribution permit from the Water Management District. The Water Master concurred that the approach proposed by the applicant Security National was consistent with the Adjudication and Final Decision of the Court. Some Water District Board members may already be aware of this, e.g., Water Management District member Judi Lehman voted in favor of the Water Master approval. The Water Master's letter and the staff report was submitted to the Water Management District as part of the application package for the permit at issue here. Of course, the Water Master rules and regulations, and indeed, the Court's Final Decision itself, require any concerns with the Water Master's action to be filed with the Court within 30 days, or in this case, by November 22, 2008.¹ Since the Water Management District did not challenge the Water Master concurrence that Security National's proposal is consistent with the

¹ Amended Decision, Page 44

Adjudication Order, we understand that the Water Management District also concurs (and in any event would have waived any objections it may have had to the Water Master's determination of consistency with the Adjudication Order.)

Also, the Seaside Adjudication Final Decision also clarifies that the Water Management District's powers, rules and regulations apply only to the extent that they are not inconsistent with the Adjudication Order.² Thus, Water Management District Rule 22 requirements are pre-empted to the extent that they are inconsistent (either facially or as applied) with the Adjudication Decision, the Court-imposed physical solution, or the determinations or interpretations of the Water Master. In particular, the Court's physical solution establishes a court-supervised mitigation and monitoring program for all production from the Seaside Basin. The Court's physical solution carefully balanced the needs and rights of all of the producers in the basin, as well as the possible environmental impacts on the Basin resulting from the pumping authorized by the Adjudication Order.

To ensure the record is complete, we also would like to address related issues by the few commentators that have concerns about the issuance of the permit:

The Suggestion That Water Should Be Supplied from the Future (Not Yet Built) Sand City Desalination Plant Rather Than Using Security National's Established Seaside Basin Water Rights:

The problem with this suggestion is that it is legally infeasible because at its October 15, 2007 meeting the Water Management District determined specifically to *exclude* the provision of desal water to the Monterey Bay Shores Eco-resort. The applicant reasonably relied on this action by the District. In any event, the findings of the EIR documents, including those made by Sand City on January 20, 2009, are of course binding on the Water Management District as a responsible agency. Those documents establish there are no significant adverse impacts related to the use or the pumping of Security National's established water rights from the Seaside Basin.

Order 95-10 and Diversions from the Carmel River (Condition 2)

A State Water Resources Control Board letter dated 1/31/2006 acknowledges that diversions from the Seaside aquifer are not subject to the requirement that they be used to offset illegal diversions from the Carmel River by Cal Am. A copy of that letter is enclosed for your ease of reference. In other words, production from the Seaside aquifer as a result of pumping from an inland location rather than a coastal location is not "new water" subject to the one-for-one replacement requirements. The Water Management District previously confirmed the SWRCB's position when it approved the Sand City desal facility.

² Amended Decision, Page 50

Cal Am has affirmatively stated that it will pump only from its wells within the Seaside Basin for supplying the Security National property. Thus, Condition 2 does not apply to the proposed water distribution system or request.

Order 95-10 and Condition 4

This condition (and all conditions) were adopted many years prior to the Seaside Adjudication Order which now governs pumping in the Seaside basin. Accordingly, Condition 4 has been superseded by the Seaside Adjudication decision. Cal Am cannot simply pump more water from the Seaside Basin beyond what is authorized by the Adjudication Order. In any event, the water that will be used by the Monterey Bay Shores Eco-Resort pursuant to its rights under the Adjudication Order is simply not "available" to Cal Am to reduce Carmel River diversions. Hence, in these particular circumstances, Condition 4 is not applicable. Cal Am is simply pumping SNG's water from inland wells rather than coastal wells.

Overlying Rights in the Seaside Basin

The Adjudication Order recognizes and gives a priority to overlying rights in the Seaside Basin, consistent with California water law. Shifting the pumping of adjudicated water within the basin is allowable under the Adjudication and clearly within the purview of the Water Master. Again, this approach has been confirmed by the Water Master at its October 23, 2008 meeting, and no appeal was made of that determination (and thus it is conclusively binding). It also should be noted that the Monterey Court previously heard and considered arguments concerning overlying rights at the trial leading up to the Adjudication Order. Thus, the Court already has ruled on this issue when it issued the Final Decision.

It also should be noted that the applicant's proposal to pump inland has nothing to do with seeking "better quality" water for the project, as erroneously suggested by the Sierra Club. Rather, it is simply a forward-thinking measure designed to add an extra layer of protection to the basin. It is not required by any rule or regulation. Instead, the applicant developed the approach in a good-faith effort to do its part as a steward in protecting the basin. This is not "bad policy," as argued by the Sierra Club. Indeed, the Sierra Club doesn't argue that pumping from an inland well rather than a coastal well is bad for the environment. And for good reason – this approach provides superior environmental benefits. Monterey Bay Shores Eco-Resort sought to minimize impacts in every aspect of its design and operation. This is no exception.

In sum, we believe that all of the issues raised by commentators are addressed in materials submitted previously, including the Monterey Court's detailed and lengthy Adjudication Order.

There are no changed circumstances which require a Subsequent EIR be prepared.

It has been suggested by several commentators that there is new evidence which requires a subsequent EIR. It should be noted that new information in and of itself does not necessarily create changed circumstances which require preparation of a subsequent EIR.³

The Water Management District was consulted on the 1998 EIR for the Security National development and it participated in its preparation. Significantly, it did not challenge the findings in the FEIR. The Water Management District has also had a chance to review and comment on the Addendum document. Significantly, the Addendum specifically reviewed the Seaside Adjudication.

A final EIR prepared by a lead agency shall be conclusively presumed to comply with CEQA for purposes of use by responsible agencies which were consulted, unless there is an adjudication that the EIR is invalid or there have been changed circumstances.⁴

Notwithstanding those arguments, the arguments raised by several commentators are simply factually inaccurate and do not rise to the level of "new or changed circumstances" under Section 15162.

The pending Cease and Desist Order involves Cal Am's diversions from the Carmel River. We are not requesting diversions from the Carmel River and Cal Am has stated affirmatively that only water pumped out of the Seaside Basin will be supplied to this project. Likewise, as discussed and identified in the Addendum to the EIR document, the Seaside Adjudication establishes several facts: it establishes an operating safe yield, it establishes a physical solution to allocate that safe yield, it establishes an ongoing monitoring program for water quality issues and it establishes as a matter of law how much Security National can pump out of the basin. Those are the only facts which have changed since 1998. Those facts have been fully and accurately analyzed. The findings of the FEIR document are binding upon the Water Management District.

With respect to the use of gray water by the project, the system has been permitted and the information is included in the Water Management District board packet. Additionally, the Water Management District is not the permitting agency for the gray water system and therefore it is outside the control of its permitting authority or jurisdiction. Nevertheless, the Addendum document analyzes the use of gray water and the FEIR document prepared in 1998 analyzes substantially more water demand than the current revised plan. There is no substantial evidence that gray water will cause any effect not already discussed in the environmental documents that are conclusively binding and *presumed valid* for purposes of the Water Management District's decision.

³ Citizens for a Megaplex-free Alameda v. City of Alameda (2007) 149 Cal App. 4th 91, 112

⁴ CEQA Guidelines 15231

Kristina Markey, Chair
1/29/2009
Page 5

The Water Management District may not disregard its own rules and procedures in continuing an application for a Water Distribution Permit

When acting in an adjudicatory capacity, such as the Water Management District does when it acts as a hearing officer under Rule 22, it must follow its own rules and regulations in order to comply with the minimum mandates of due process. Rule 22 A.6(c) limits the grounds upon which the hearing officer may extend the hearing to those minimum standards included in Rule 22-C and Rule 22-B. Likewise, a request for additional information or legal opinions can only be granted to the extent necessary to satisfy the minimum requirements of Rule 22-C and Rule 22-B. The Hearing Officer in this case, is the entire Water Management Board, and any such requests must be approved by the Hearing Officer, not simply the chair. As outlined above, those Rules and their requirements are now limited and superceded by the Seaside Adjudication order.

We trust that the Board will not be misled by legally and factually incorrect arguments presented on these issues by single purpose groups, and instead will evaluate the project and its water needs in a fair and balanced manner. We believe that this project would truly be a source of pride for the entire Monterey community given its cutting-edge sustainable design and features. We request that the Board approve the Water Distribution System permit application as proposed.

Sincerely,
Lombardo & Gilles



Sheri L. Damon

Enc.

Cc: Henrietta Stern



State Water Resources Control Board



CM

Alan C. Lloyd, Ph.D.
Agency Secretary

Executive Office
Tam M. Doduc, Board Chair
1001 I Street • Sacramento, California • 95814 • (916) 341-5615
P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5621 • www.waterboards.ca.gov

Arnold Schwarzenegger
Governor

EXHIBIT 20-J

In Reply Refer
to:334:KDM:262.0 (27-01)

JAN 31 2006

Steve Leonard
Vice President/Manager
California American Water Company
P.O. Box 951
Monterey, CA 93942-0951

CITY OF SAND CITY

FEB 03 2006

RECEIVED

Dear Mr. Leonard:

CALIFORNIA AMERICAN WATER COMPANY (CAL-AM) PROPOSED PURCHASE OF WATER PRODUCED BY THE SAND CITY DESALINATION FACILITY, COMPLIANCE WITH ORDER WR 95-10, FILE 262.0 (27-01)

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) has reviewed the proposed development of a 300 acre-feet (af) capacity desalination facility by the City of Sand City (Sand City) that will utilize a non-potable brackish water aquifer in the Seaside groundwater basin as the source water. The review focused on whether Cal-Am can utilize the water produced by Sand City without conflicting with condition 2 of Order WR 95-10.

Condition 2:

Cal-Am shall diligently implement one or more of the following actions to terminate its unlawful diversions from the Carmel River: (1) obtain appropriative permits for water being unlawfully diverted from the Carmel River, (2) obtain water from other sources of supply and make one-for-one reductions in unlawful diversions from the Carmel River, provided that water pumped from the Seaside aquifer shall be governed by condition 4 of this Order not this condition, and/or (3) contract with another agency having appropriative rights to divert and use water from the Carmel River.

Condition 4:

Cal-Am shall maximize production from the Seaside aquifer for the purpose of serving existing connections, honoring existing commitments (allocation), and to reduce diversions from the Carmel River to the greatest practicable extent. The long-term yield of the basin shall be maintained by using the practical rate of withdrawal method.

California Environmental Protection Agency



Steve Leonard

- 2 -

JAN 31 2006

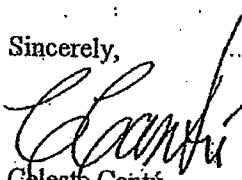
Based on condition 2, diversions from the Seaside aquifer are not subject to the requirement that they be used to offset illegal diversions from the Carmel River by Cal-Am. In accordance with condition 4, Cal-Am is cautioned that any new diversions from the Seaside aquifer should not create nor worsen any overdraft of the Seaside groundwater basin. As the purchaser of the water supply, Cal-Am is expected to comply with condition 4 of Order WR 95-10 regarding this new water supply.

The Division anticipates that the proposed new project will need to be operated in compliance with any Court order in the pending adjudication of the Seaside groundwater basin. Nothing in this correspondence should be construed as authorization for a project that otherwise would conflict with any findings in the adjudication.

Sand City's November 21, 2005 letter states that Cal-Am intends to purchase all of the 300 af and will then reduce pumping from the Carmel River by a like amount. As Sand City grows and utilizes the product water from the desalination facility, less water will be available to offset Carmel River diversions. Cal-Am must comply with Order WR 95-10, including the requirement to terminate its unlawful diversions from the Carmel River. Sand City's proposed project will not be counted toward offsetting illegal diversions because it only temporarily reduces Carmel River diversions and is not a permanent solution. Should a portion of this water supply be permanently dedicated to offsetting Carmel River diversions in the future, this opinion may be changed to reflect the new information.

Katherine Mrowka is the senior staff person assigned to this matter, and she can be contacted at (916) 341-5363.

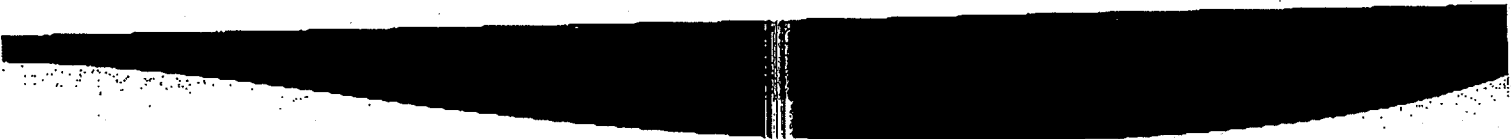
Sincerely,



Celeste Cantú

Executive Director

cc: Mr. Kelly Morgan
City Administrator
City of Sand City
1 Sylvan Park
Sand City, CA 93955



CALIFORNIA
AMERICAN WATER

California American Water - Monterey
511 Forest Lodge Rd, Suite 100
Pacific Grove, CA 93950
amwater.com

January 29, 2009

Mr. Ed Ghandour, President
Monterey Bay Shores Ecoresort
505 Montgomery Street, Suite 1019
San Francisco, CA 94111

RECEIVED
JAN 29 2009
MPWMD

Dear Mr. Ghandour,

This letter confirms California American Water (CAW) will deliver up to 90 acre-feet of the Monterey Bay Shores Ecoresort (MBSE) Seaside Basin entitled water right to Assessor's Parcel Number (APN) 011-501-014. CAW will insure Seaside Wells will be operated year round to deliver MBSE water to the above parcel.

If I can be of further assistance, I can be reached at 831-646-3214.

Sincerely,

Craig E. Anthony
General Manager
Central Division

Cc: Darby Fuerst

**OFFICE OF THE MAYOR**440 Harcourt Avenue
Seaside, CA 93955Telephone (831) 899-6703
FAX (831) 899-6227

January 28, 2009

Board of Directors
Monterey Peninsula Water Management District
ATTN: Henrietta Stern, Project Manager
P.O. Box 85
Monterey, CA 93942-0085

JAN 28 2009

**REF: Monterey Bay Shores Ecoresort Water Distribution Permit Application
#20080915MBS-L4, APN 011-501-014**

Dear Board Members:

The City of Seaside would like to express our support for the Water Distribution Permit that will enable Cal-Am to service the Monterey Bay Shores Ecoresort with up to 90 acre-feet of water per year.

As we understand it from staff report, the owner has the rights to the water and this application merely allows Cal-Am to pump that water further inland from the coast and deliver it to the site. We should all applaud that the owner has decided to move the pumping inland to prevent potential salt water intrusion. In addition, we concur with the staff recommendation for approval and its findings, as well as its recommended Conditions of Approval.

The City is particularly impressed with the water conservation, water efficiency, and storm management and recycle/graywater programs systems that the Monterey Bay Shores Ecoresort will implement and bring to the Monterey Peninsula. Coupled with the ecologically sensitive design, green roofs and renewable energy sources, we are very supportive of this project because of its low environmental impacts.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ralph Rubio".

Ralph Rubio
Mayor

RR:rs

c: City Council Members
Ray Corpuz, City Manager
Diana Ingersoll, Deputy City Manager- Resource Management
Ed Ghandour, Monterey Bay Shores Sustainable Green Design

LandWatch

monterey county

Post Office Box 1876
Salinas, CA 93902-1876
Salinas Phone: 831-422-9390
Monterey Phone: 831-375-3752
Website: www.landwatch.org
Email: landwatch@mclw.org
Fax: 831-422-9391



January 27, 2009

Kristi Markey, Chair
MPWMD Board of Directors
P.O. Box 85
Monterey, CA 93942

RECEIVED

JAN 29 2009

MPWMD

Subject: 341 Unit Monterey Bay Shores Resort

Dear Chair and Members of the Board of Directors:

LandWatch Monterey County has reviewed the staff report and Addendum for the Monterey Bay Shores Resort. Based on our evaluation, a Subsequent Environmental Impact must be prepared in accordance with the California Environmental Quality Act (CEQA). Requiring additional environmental review of water supply, water quality and hydrology issues is within the purview of the Monterey Peninsula Water Management District which must rely on an adequate environmental document to take discretionary action on the proposed project. Our specific comments follow:

Role of MPWMD as a Responsible Agency

CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible (CEQA Guidelines §15021). The Guidelines require a responsible agency to consider the environmental documents prepared by the lead agency and to reach its own conclusions on whether and how to approve the project (CEQA Guidelines §15096). Responsible agencies may refuse to approve a project to avoid direct or indirect effects of that part of the project which the Responsible Agency is required to act upon (CEQA Guidelines, §15042).

CEQA requires that each responsible agency certify that its decision making body reviews and considers the information contained in the EIR [CEQA Guidelines §15050(b)]. Further, the Guidelines require a responsible agency to consider an addendum with the final EIR prior to making a decision on the project [CEQA Guidelines §15164 (d)]. To our knowledge, only a Revised Draft Addendum has been provided to the District Board, and the Board has not considered the FEIR.

Subsequent EIR is Required

CEQA (CEQA §21166) requires the preparation of a Subsequent EIR if:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

Substantial Changes to Circumstances Under Which the Project is Being Undertaken and New Information Available

The FEIR for the project was certified in 1998, more than 10 years ago. Since that time, substantial changes to the circumstances of the project have arisen and new information is available making the analysis of the Addendum insufficient and requiring a subsequent EIR in order to comply with CEQA. The following circumstances and new information require new analysis:

1. State Water Resources Control Board (SWRCB) Order 95-10 required reduced pumping from the Carmel River. Because efforts by Cal-Am and MPWD have failed to achieve any significant reduction of unlawful diversions from the Carmel River since 1998, SWRCB has issued a Draft Cease and Desist Order (CDO) with a final order expected later this year. **The issuance of the Draft CDO alone is a new circumstance requiring a new EIR and project impacts on the environment and existing water users must be considered in a Subsequent EIR in light of a final CDO.**
2. Since the project was approved, the Seaside Groundwater Basin was adjudicated, and it was determined that the Basin is in overdraft. The court also determined that the project applicant (Security National) is entitled to 149 AFY from the basin. The DEIR states that water demand for the revised project is estimated at 63.8 AFY, and CalAm would provide water service (p. 69). Because the revised project would use less water than the approved project, the Addendum finds the project's impact on groundwater to be less than that of the approved project. **CEQA requires that the project's impact be evaluated against existing conditions, not another project.** Clearly, additional withdrawal from the basin would have a significant adverse impact on groundwater supplies and water quality. **Further, the impact on other water users could be significant if they would be required to reduce their water extractions so that this project could be served. This potential impact requires a Subsequent EIR.**
3. **Finding #21 of the staff report (p. 217) states, "A key change (since the original application) is water service by CAW via SNG's adjudicated water rights rather than service by onsite shallow wells." This is a significant change that should be analyzed in a Subsequent EIR.**
4. **A new water supply from the pending Sand City desalination project is a feasible mitigation measure that should be considered. This is clearly new information**

that must be addressed in a Subsequent EIR.

5. The project would use graywater and stormwater runoff to supplement its water supply (p. 69). **Graywater is currently not permitted to be used in Monterey County. This is new information that must be addressed in a Subsequent EIR.**

In conclusion, MPWMD should take no action on the Monterey Bay shores Resort water permit until a Subsequent EIR has been prepared, re-circulated, and MPWMD has had and opportunity to review the new EIR and the public comments on that new document.

Thank you for the opportunity to review the document.

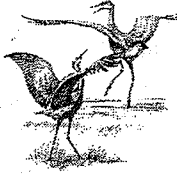
Sincerely,



Chris Fitz, Executive Director
LandWatch Monterey County

cc: City of Sand City

CALIFORNIA ENVIRONMENTAL LAW PROJECT
A Non-Profit Legal Corporation



Of Counsel

Laurens H. Silver, Esq.
P.O. Box 667
Mill Valley, CA 94942
Telephone: (510) 237-6598
Facsimile: (510) 237-6598

JAN 26 2009

MPWMD

January 26, 2009

Darby Fuerst, General Mgr.
Henrietta Stern
Monterey Peninsula Water Management District.
5 Harris Court Building,
GPO Box 85
Monterey CA. 93942 0085

Re: Application of Cal-Am for Water Distribution Permit To Serve Monterey
Bay Shores Ecoresort

Dear Mr. Fuerst and Ms. Stern:

Sierra Club wishes to respond to SNG's counsel's letter dated January 21, 2009, and to the District's Staff Report.

I.

Sierra Club Response to SNG Counsel's Letter of January 21, 2009

In her letter, counsel for SNG states: "There is no question that expansion [sic] of Cal-Am's water system permit based upon pumping an additional 90 AFY, so [sic] Condition 4 [of Order 95-10] could conceivably apply." (p.3). Then, despite this statement, counsel cites a number of reasons why she believes Condition 4 is inapplicable. None of these reasons are persuasive or even responsive to Sierra Club's arguments.

The first reason given is that "development of water and purveying of water within the Seaside Basin is governed by the Seaside Adjudication Order, so Cal-Am can't maximize production from the Seaside Basin in a way inconsistent with the Order." *Id.* Counsel, however, fails to inform the Board how requiring Cal-Am to comply with Conditions 2 and 4 of WR Order 95-10 would result in maximizing production from the Seaside Basin in a manner inconsistent with the adjudication. In fact, so conditioning the permit would not be inconsistent with the adjudication in any manner, but would fulfill the intent of Order 95-10.

Under the contemplated scenario, described in SNG's counsel's letter, "Cal-Am is simply purveying or supplying a portion of SNG's water right from an area inland of the SNG

property.” In effect, SNG is purported to trade its “overlying pumping right” to Cal-Am in exchange for Cal-Am supplying (better quality) water to SNG by means of augmented pumping from the Seaside Aquifer.

This “transfer” to Cal-Am for the purpose of purveying pumped ground-water back to the SNG site constitutes, within the meaning of Condition 2 of 95-10, “new” water (or water “from other sources”) that must be subtracted from the annual Cal-Am production limit on a one-to-one basis. This reduction, required by Order 95-10, is in no manner inconsistent with the adjudication.

The second reason given by counsel is also unresponsive and does not constitute a reason for rejecting Sierra Club’s request. Counsel for SNG states: “Thus, it is error to believe that Cal-Am is ‘producing’ the 90 afy which is the basis of the water right for the expansion of connections that will be required to serve the SNG property, instead Cal-Am’s simply purveying or supplying a portion of SNG’s water right from an area inland of the SNG property.” (Letter at 3.) Under Condition 2 of Order 95-10 the criterion for applicability of the one-for-one replacement requirement is based upon “pumping from the Seaside aquifer,” not production. For the reasons cited above, and in CELP’s January 15 letter, Cal-Am’s augmented pumping from the Aquifer is derived from another pumping source that does not come within the exception to the one-for-one reduction requirement as set forth in Condition 4 of Order 95-10.

Thus, SNG’s purported exchange of its Alternative Production Allocation (overlying groundwater right) to Cal-Am in return for Cal-Am pumping off-site groundwater for delivery to SNG’s site constitutes “new water” within the meaning of Condition 2 of Order 95-10.¹

In Decision 95-10, the Board made it clear that its intent was to more fully utilize water available in the Seaside Aquifer in order to reduce the effects of its illegal diversions on the Carmel River and to reduce its effects on public trust resources. The Board concluded:

“Thus, we find that Cal-Am should be required to maximize production from the Seaside Aquifer and reduce diversions from the river to the greatest practicable extent.” Order 95-10 at 34.

“To the greatest practicable extent” means that Conditions 2 and 4 must be strictly construed in a manner that promotes beneficial effects on Carmel River Resources. In fulfillment of this intent, SNG’s contractual relationship with Cal-Am for the utilization of Cal-Am pumped water on SNG’s property and the extension of its service boundary, constitutes the obtaining of water from another source within the meaning of Condition 2, and the (non-applicable) exceptions set out in Condition 4.

II.

The Contractual Arrangement Between SNG and Cal-Am, Whereby Cal-Am

¹ At page 3, counsel’s letter indicates it has seriously misunderstood Sierra Club’s position. First, counsel’s letter implies that Sierra Club’s arguments are based on an unlikely scenario – “such as an order from the State Board ordering Cal-Am to cease all diversions from the State Board” Sierra Club makes no such assumption. Sierra Club’s arguments are based on the text of Order 95-10 and its intention to reduce Cal-Am’s continuing unlawful diversions from the Carmel River (which are in excess of 7000 AFY) in the event of Cal-Am acquiring “new” water.

CALIFORNIA ENVIRONMENTAL LAW PROJECT
A Non-Profit Legal Corporation



Of Counsel

Laurens H. Silver, Esq.
P.O. Box 667
Mill Valley, CA 94942
Telephone: (510) 237-6598
Facsimile: (510) 237-6598

January 26, 2009

Darby Fuerst, General Mgr.
Henrietta Stern
Monterey Peninsula Water Management District.
5 Harris Court Building,
GPO Box 85
Monterey CA. 93942 0085

Re: Application of Cal-Am for Water Distribution Permit To Serve Monterey
Bay Shores Ecoresort

Dear Mr. Fuerst and Ms. Stern:

Sierra Club wishes to respond to SNG's counsel's letter dated January 21, 2009, and to the District's Staff Report.

I.

Sierra Club Response to SNG Counsel's Letter of January 21, 2009

In her letter, counsel for SNG states: "There is no question that expansion [sic] of Cal-Am's water system permit based upon pumping an additional 90 AFY, so [sic] Condition 4 [of Order 95-10] could conceivably apply." (p.3). Then, despite this statement, counsel cites a number of reasons why she believes Condition 4 is inapplicable. None of these reasons are persuasive or even responsive to Sierra Club's arguments.

The first reason given is that "development of water and purveying of water within the Seaside Basin is governed by the Seaside Adjudication Order, so Cal-Am can't maximize production from the Seaside Basin in a way inconsistent with the Order." *Id.* Counsel, however, fails to inform the Board how requiring Cal-Am to comply with Conditions 2 and 4 of WR Order 95-10 would result in maximizing production from the Seaside Basin in a manner inconsistent with the adjudication. In fact, so conditioning the permit would not be inconsistent with the adjudication in any manner, but would fulfill the intent of Order 95-10.

Under the contemplated scenario, described in SNG's counsel's letter, "Cal-Am is simply purveying or supplying a portion of SNG's water right from an area inland of the SNG

property.” In effect, SNG is purported to trade its “overlying pumping right” to Cal-Am in exchange for Cal-Am supplying (better quality) water to SNG by means of augmented pumping from the Seaside Aquifer.

This “transfer” to Cal-Am for the purpose of purveying pumped ground-water back to the SNG site constitutes, within the meaning of Condition 2 of 95-10, “new” water (or water “from other sources”) that must be subtracted from the annual Cal-Am production limit on a one-to-one basis. This reduction, required by Order 95-10, is in no manner inconsistent with the adjudication.

The second reason given by counsel is also unresponsive and does not constitute a reason for rejecting Sierra Club’s request. Counsel for SNG states: “Thus, it is error to believe that Cal-Am is ‘producing’ the 90 afy which is the basis of the water right for the expansion of connections that will be required to serve the SNG property, instead Cal-Am’s simply purveying or supplying a portion of SNG’s water right from an area inland of the SNG property.” (Letter at 3.) Under Condition 2 of Order 95-10 the criterion for applicability of the one-for-one replacement requirement is based upon “pumping from the Seaside aquifer,” not production. For the reasons cited above, and in CELP’s January 15 letter, Cal-Am’s augmented pumping from the Aquifer is derived from another pumping source that does not come within the exception to the one-for-one reduction requirement as set forth in Condition 4 of Order 95-10.

Thus, SNG’s purported exchange of its Alternative Production Allocation (overlying groundwater right) to Cal-Am in return for Cal-Am pumping off-site groundwater for delivery to SNG’s site constitutes “new water” within the meaning of Condition 2 of Order 95-10.¹

In Decision 95-10, the Board made it clear that its intent was to more fully utilize water available in the Seaside Aquifer in order to reduce the effects of its illegal diversions on the Carmel River and to reduce its effects on public trust resources. The Board concluded:

“Thus, we find that Cal-Am should be required to maximize production from the Seaside Aquifer and reduce diversions from the river to the greatest practicable extent.” Order 95-10 at 34.

“To the greatest practicable extent” means that Conditions 2 and 4 must be strictly construed in a manner that promotes beneficial effects on Carmel River Resources. In fulfillment of this intent, SNG’s contractual relationship with Cal-Am for the utilization of Cal-Am pumped water on SNG’s property and the extension of its service boundary, constitutes the obtaining of water from another source within the meaning of Condition 2, and the (non-applicable) exceptions set out in Condition 4.

II.

The Contractual Arrangement Between SNG and Cal-Am, Whereby Cal-Am

¹ At page 3, counsel’s letter indicates it has seriously misunderstood Sierra Club’s position. First, counsel’s letter implies that Sierra Club’s arguments are based on an unlikely scenario – “such as an order from the State Board ordering Cal-Am to cease all diversions from the State Board” Sierra Club makes no such assumption. Sierra Club’s arguments are based on the text of Order 95-10 and its intention to reduce Cal-Am’s continuing unlawful diversions from the Carmel River (which are in excess of 7000 AFY) in the event of Cal-Am acquiring “new” water.

Pumps Water Off-site for Use by SNG on Site, Is Contrary to the Common Law of Overlying Water Rights, In that it Severs the Appurtenant Ground-Water Pumping Right from the Overlying Land

In approving a water distribution permit to Cal-Am sanctioning its augmented pumping from the Seaside aquifer the District is allowing and approving an unlawful use of SNG's overlying right in violation of California law. The overlying right, as noted below, constitutes a appurtenant right to take water from the ground and use it on the overlying property. It is unlawful to sever the appurtenant pumping right from the right of use. The overlying land-owner cannot lawfully "convey" its groundwater pumping right to a third party, who is to pump water not appurtenant to the overlying land.

District Staff states in the Staff Report:

CAW extractions from the Seaside Basin could increase by up to 90 AFY based on water rights held by SNG, as specified in the Seaside Basin adjudication (Staff Report at 1).

For the reasons explained below it is contrary to the California law of overlying groundwater rights for staff to conclude that augmented pumping in the Seaside Basin by Cal-Am for the purpose of supplying SNG's on site uses, can be derived from or "based on [overlying] water rights held by SNG."

In City of Barstow v Mohave Water Agency, 23 Cal.4th, 1224 (2000), the Supreme Court characterized an overlying right as "the owner's right to take water from the ground underneath for use on his land within the basin or watershed; it is based on ownership of the land and is appurtenant. 23 Cal 4th at 1231. (emphasis added) The Court cited "California Water Service Co. v. Edw. Sidebotham and Sons, 224 Cal.App. 2d, 715-725. (1964) in support of its statement.

In Hutchins, Water Rights Laws In Nineteen Western States, it is stated:

"The right to use percolated water, as well as the corpus of the water itself, is real property." In Pasadena v. Alhambra, 33 Cal.2d 908, 925 (1949) the California Supreme Court stated that the overlying "right," or right of the owner of the land, "to take water from the ground underneath for use of his underlying land "is based on ownership of the land and is appurtenant thereto." (Huchins, Vol.II, 67). (emphasis added)

Allowing or sanctioning such severance is bad public policy. If the Board allows this precedent to occur, any owner of an Alternative Production Allocation under the Seaside Decree could similarly sever its appurtenant pumping right from its property and conceivably allow for its use offsite. Whatever the consequences, sanctioning such a severance, and compounding the lack of proper regulatory oversight by not conditioning the approval on reduction of the Cal-Am production allowance, should be avoided by this Board.²

² The Board should note that (including SNG), there are approximately 1400 acre-feet in Alternative Production Allocations under the Seaside Decree.

III.

This Board Has the Authority to Condition a Permit to Cal-Am on A One-For-One Reduction in Cal-Am's Production Allowance

In the Staff Report, comment is made on Sierra Club's January 15, 2009 letter. Staff comments:

"Another question is whether the District has the authority to reduce the 11,285 AFY diversion limit set by the SWRCB."

Mr. Fuerst's testimony at the recent hearings relating to the State Board's proposed Cease and Desist Order makes it clear that the District has plenary authority to take into account one-for-one reductions in the Cal-Am diversions limit in setting its annual production limits, in a manner consistent with Order 95-10. Mr. Fuerst's testimony, dated June 5, 2008, in Phase I of the State Board hearings, states:

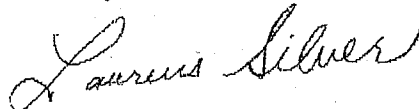
"With respect to water system management, the MPWMD controls formation of new water systems and additions of new sources of supply, connections, or service territory to existing systems. The MPWMD manages water demand by setting a maximum number of connections and quantity of annual production for each water distribution system..."(Paragraph 8)

IV.

Board Action Requested by Sierra Club

Sierra Club requests that the Board defer consideration of the Cal-Am-SNG applications for extension of its service area and for a water distribution permit to serve SNG's resort until such time as the Water Rights Divisions of the State Board rules on Sierra Club's request for an opinion. If, however, this Board decides to approve Cal-Am's applications, they should be conditioned on a reduction in Cal-Am's production allowance (for the Carmel River) on an acre foot per acre-foot basis. If the Board decides that Cal-Am's applications are consistent with Conditions 2 and 4 of Order 95-10 then it should condition the permit on the results of any exercise by a court of competent jurisdiction relating to compliance with Order 95-10 (at the request of a beneficially interested entity).

Sincerely,



Laurens Silver
California Environmental Law Project

received via e-mail
1/26/09 at 8:15 PM
Darby Fuerst

Michael T Dawson
PO Box 768
Monterey, CA 93942
646-8142

JAN 28 2009

MPWMD

January 25, 2009

Board of Directors
Monterey Peninsula Water Management District
PO BOX 85
Monterey, CA 93942

Re: Ecoresort Water App

Chair Markey and Members:

As a water customer of the California America Water Co, I am writing to express my outrage that this so-called Ecoresort is now applying for water from our limited source.

What about 'overpumped' is confusing to them? Or to their misinformed supporters? I've questioned the developments at the former Fort Ord on the basis of water and traffic, and was told that the developments have an 'allocation' of water (and they'll pay a few dollars toward improving the road network). An allocation of water that's already been overpumped? Where will this end? Will the State of California red-tag the whole region? That would be the practical impact of a 50% cutback (Per Order 95-10). **Approval of this application could prove to be the 'final straw' to force the State to act.**

I fully understand the need for developers to build to make money, however, I object if their profit is at my expense. And it surely will cost me (and you) money if this application is approved. Our water resource is in grave danger of being further restricted by state order, and the only solutions to the crisis are extremely expensive. I consider it morally unfair to be forced to buy overpriced water because some developer wants to make money.

Please do not approve this application!

Respectfully,



Mike Dawson

Name: John Meyer
Address: 296 Van Buren mtny
E-mail: John@stonepine@att.net

January 21, 2009

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
P.O.Box 85
Monterey, Ca 93942-0085

JAN 26 2009

Attention: Henrietta Stern, Project Manager

REF: Monterey Bay Shores Ecoresort Water Distribution Permit Application
#20080915MBS-L4, APN 011-501-014

Dear Members of the Board:

We(I) would like to express our support for the MPWMD granting and approving on its regularly scheduled public hearing on January 29, 2009, the Water Distribution Permit that will enable Cal-Am to service the Monterey Bay Shores Ecoresort with up to 90 acre-feet of water per year. As we understand it from staff report, the owner has the rights to the water and this application merely allows Cal-Am to pump that water further inland from the coast and deliver it to the site. We(I) should all applaud that the owner has decided to move the pumping inland to prevent potential salt water intrusion. We(I) concur with the Staff recommendation for approval and its findings as well as its recommended Conditions of Approval.

We(I) are particularly impressed with the water conservation, water efficiency and storm management and recycle/graywater programs systems that the Monterey Bay Shores Ecoresort will implement and bring to the Monterey Peninsula. It's about time we saw the introduction of such conservation at the project level. Those cutting edge systems are much needed for our community and should serve as a model for future projects. Coupled with the ecologically sensitive design, green roofs and renewable energy sources, we(I) are very supportive of this project because of its low environmental impacts.

Please **approve** the permit in front of the Board so that this "ecoresort" can move forward.

Sincerely,

A handwritten signature in black ink, appearing to be 'John Meyer', written over a horizontal line.

Name:

Address:

E-mail:

January 21, 2009

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
P.O.Box 85
Monterey, Ca 93942-0085

JAN 26 2009

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Please **approve** the permit in front of the Board so that this "ecoresort" can move forward.

Sincerely,



Name: MAX PERELMAN

Address: 472 JUNIPERO AVE, PC, CA 93950

E-mail:

January 21, 2009

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
P.O.Box 85
Monterey, Ca 93942-0085

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Please **approve** the permit in front of the Board so that this "ecoresort" can move forward.

Sincerely,



MAX PERELMAN

Name:

e-mail:

JAN 26 2009

January 21, 2009

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
P.O.Box 85
Monterey, Ca 93942-0085

**REF: Monterey Bay Shores Ecoresort Water Distribution Permit Application
APN 011-501-014 – Please Approve the Permit on January 29th!**

Dear Chair Markey and Board Members:

I would like to express my strong support for the District approving the Water Distribution Permit for the Monterey Bay Shores Ecoresort. I am very supportive of the "ecoresort" water savings initiatives that it demonstrates, something we as residents of the Monterey Peninsula need. This project will lead the way by demonstrating that by saving water, we can manage effectively our precious water resources. Their gray water recycling system will become Monterey County's first project specific system that saves water. This can serve as a model for others to retro-fit or install new graywater systems. Their other water saving systems including stormwater management, harvesting and collecting rainwater and green roofs, are equally impressive. I agree with the Staff recommendation for approval.

Please **approve** the permit for the Monterey Bay Shores Ecoresort.

Respectfully yours,



Name:

e-mail:

JAN 26 2009

January 21, 2009

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
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Monterey, Ca 93942-0085

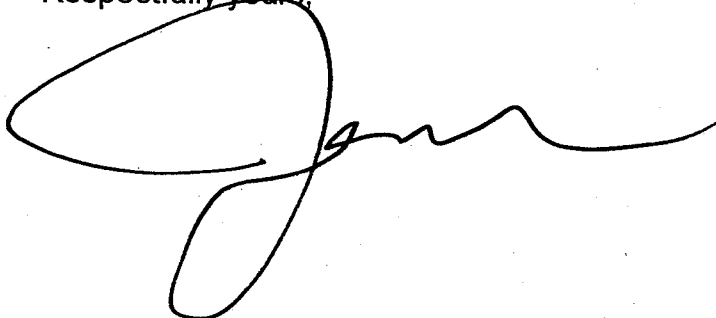
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Please **approve** the permit for the Monterey Bay Shores Ecoresort.

Respectfully yours,

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a series of connected loops and a long horizontal stroke extending to the right.

Name: Travis Selfridge
Address: 96 Via Descanso, Monterey CA
E-mail: tselfridge @ excite.com

January 21, 2009

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
P.O.Box 85
Monterey, Ca 93942-0085

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Please **approve** the permit in front of the Board so that this "ecoresort" can move forward.

Sincerely,



Name: Travis Selfridge

e-mail: tselfridge@excite.com

January 21, 2009

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Please **approve** the permit for the Monterey Bay Shores Ecoresort.

Respectfully yours,



Name: Sarah Graham

e-mail: Sarah@marinelifegallery.com

January 21, 2009

JAN 26 2009

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Monterey Peninsula Water Management District
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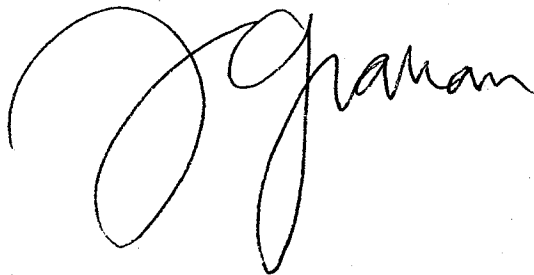
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Please **approve** the permit for the Monterey Bay Shores Ecoresort.

Respectfully yours,



Name: Sarah Graham

Address: 13614 Monte Del Sol Castroville CA

E-mail: Sarah@marinlifegallery.com

January 21, 2009

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
P.O.Box 85
Monterey, Ca 93942-0085

JAN 26 2009

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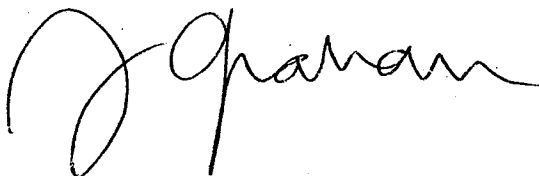
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Please **approve** the permit in front of the Board so that this "ecoresort" can move forward.

Sincerely,



Name: Tiffany Loia
1954 McDaniel
San Jose, CA 95126
e-mail:
tiffany_loia@yahoo.com

January 21, 2009

JAN 26 2009

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Monterey Peninsula Water Management District
5 Harris Court
P.O.Box 85
Monterey, Ca 93942-0085

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Please **approve** the permit for the Monterey Bay Shores Ecoresort.

Respectfully yours,

Tiffany Loia

Name: Tiffany Loia
Address: 1954 McDaniel
E-mail: San Jose, CA 95126
Tiffany_loia@yahoo.com

January 21, 2009

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
P.O.Box 85
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Please **approve** the permit in front of the Board so that this "ecoresort" can move forward.

Sincerely,

Tiffany Loia

Name: MONICA ANDERSON

e-mail: monica@wrdarch.com

January 21, 2009

JAN 26 2009

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
P.O.Box 85
Monterey, Ca 93942-0085

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Please **approve** the permit for the Monterey Bay Shores Ecoresort.

Respectfully yours,

Monica Anderson

Name: MONICA ANDERSON

Address: 329 CALIFORNIA ST.

E-mail: monicaa@wrdarch.com

January 21, 2009

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
P.O.Box 85
Monterey, Ca 93942-0085

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Please **approve** the permit in front of the Board so that this "ecoresort" can move forward.

Sincerely,



Name: **GEORGE A. SPEARS**

e-mail: **GASPEARS@GMAIL.COM**

January 21, 2009

JAN 26 2009

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
P.O.Box 85
Monterey, Ca 93942-0085

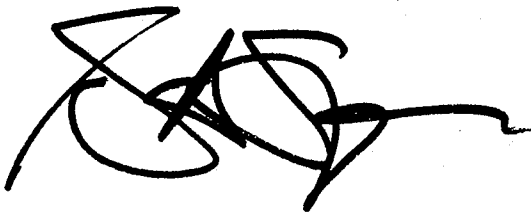
**REF: Monterey Bay Shores Ecoresort Water Distribution Permit Application
APN 011-501-014 – Please Approve the Permit on January 29th!**

Dear Chair Markey and Board Members:

I would like to express my strong support for the District approving the Water Distribution Permit for the Monterey Bay Shores Ecoresort. I am very supportive of the "ecoresort" water savings initiatives that it demonstrates, something we as residents of the Monterey Peninsula need. This project will lead the way by demonstrating that by saving water, we can manage effectively our precious water resources. Their gray water recycling system will become Monterey County's first project specific system that saves water. This can serve as a model for others to retro-fit or install new graywater systems. Their other water saving systems including stormwater management, harvesting and collecting rainwater and green roofs, are equally impressive. I agree with the Staff recommendation for approval.

Please **approve** the permit for the Monterey Bay Shores Ecoresort.

Respectfully yours,



Name: **GEORGE A. SPEARS**
Address: **PO BOX 51074**
E-mail: **PACIFIC GROVE CA**
GASPEARS@GMAIL.COM 93950

January 21, 2009

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
P.O.Box 85
Monterey, Ca 93942-0085

JAN 26 2009

Attention: Henrietta Stern, Project Manager

REF: Monterey Bay Shores Ecoresort Water Distribution Permit Application
#20080915MBS-L4, APN 011-501-014

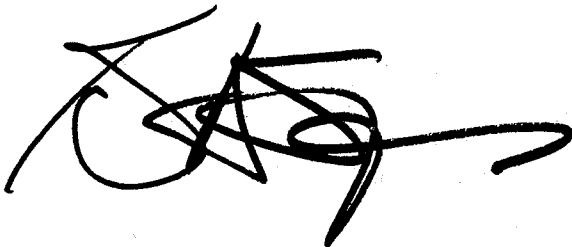
Dear Members of the Board:

We(I) would like to express our support for the MPWMD granting and approving on its regularly scheduled public hearing on January 29, 2009, the Water Distribution Permit that will enable Cal-Am to service the Monterey Bay Shores Ecoresort with up to 90 acre-feet of water per year. As we understand it from staff report, the owner has the rights to the water and this application merely allows Cal-Am to pump that water further inland from the coast and deliver it to the site. We(I) should all applaud that the owner has decided to move the pumping inland to prevent potential salt water intrusion. We(I) concur with the Staff recommendation for approval and its findings as well as its recommended Conditions of Approval.

We(I) are particularly impressed with the water conservation, water efficiency and storm management and recycle/graywater programs systems that the Monterey Bay Shores Ecoresort will implement and bring to the Monterey Peninsula. It's about time we saw the introduction of such conservation at the project level. Those cutting edge systems are much needed for our community and should serve as a model for future projects. Coupled with the ecologically sensitive design, green roofs and renewable energy sources, we(I) are very supportive of this project because of its low environmental impacts.

Please **approve** the permit in front of the Board so that this "ecoresort" can move forward.

Sincerely,



Name: Jim Bruno

e-mail: JBBMTRY@AOL

January 21, 2009

JAN 26 2009

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
P.O.Box 85
Monterey, Ca 93942-0085

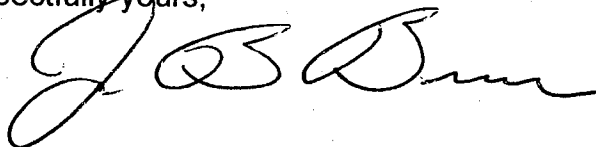
**REF: Monterey Bay Shores Ecoresort Water Distribution Permit Application
APN 011-501-014 – Please Approve the Permit on January 29th!**

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Please **approve** the permit for the Monterey Bay Shores Ecoresort.

Respectfully yours,



Name: Ashley Beleny

e-mail:

January 21, 2009

JAN 26 2009

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
P.O.Box 85
Monterey, Ca 93942-0085

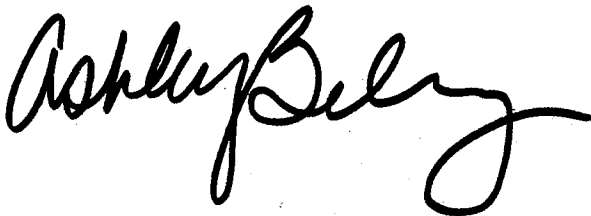
REF: Monterey Bay Shores Ecoresort Water Distribution Permit Application
APN 011-501-014 – **Please Approve the Permit on January 29th!**

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Please **approve** the permit for the Monterey Bay Shores Ecoresort.

Respectfully yours,



Name: Warren Easton

e-mail: warren@ventanadoor.com

January 21, 2009

JAN 26 2009

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
P.O.Box 85
Monterey, Ca 93942-0085

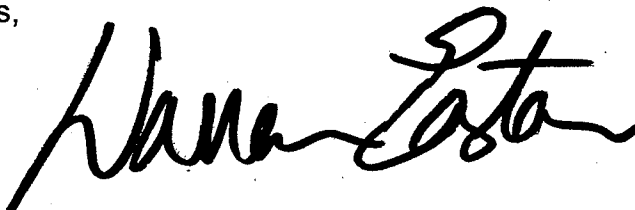
**REF: Monterey Bay Shores Ecoresort Water Distribution Permit Application
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Please **approve** the permit for the Monterey Bay Shores Ecoresort.

Respectfully yours,



RECEIVED

JAN 23 2009

MPWMD

January 13, 2009

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
P.O.Box 85
Monterey, Ca 93942-0085

Attention: Henrietta Stern, Project Manager

REF: Monterey Bay Shores Ecoresort Water Distribution Permit Application
#20080915MBS-L4, APN 011-501-014

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Sincerely,

