EXHIBIT 15-M

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 15, 2009

Darby Fuerst, General Mgr.
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:

This letter concerns the Application to Amend Cal-Am Water Distribution System to Serve Monterey Bay Shores Ecoresort in Sand City, (MPWMD Application #20080915MBS-L4; APN 011-501-014 Cal Am and Security National Guarantee, Co-Applicants), and is written on behalf of Sierra Club. Based on WRCB Order 95-10, as will be set forth below, Sierra Cub urges the District to include in its Conditions of Approval for this project a condition that would require that the water pumped by Cal Am for use on the SNG site (90AFY) be subtracted from the CAW system production limit of 11,285 from the Carmel River, in accord with SWRCB Order 95-10, Conditions 2 and 4.

The District's staff Report states: "The CAW system production limit of 11,285 from the Carmel River as currently set by the SWRCB Order 95-10 would not be changed by this action." (Staff Report for November 17 Board Meeting at 4). If this statement means that the 90 AFY pumped by Cal-Am will not be subtracted from the Cal-Am production limit from the Carmel River, staff's conclusion is not consistent with the express language of Order 95-10.

Conditions 2 and 4 of Order 95-10 are applicable. Condition 2 provides:

> 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) to obtain water from other sources of supply and make one-for-one

> reductions in unlawful diversions from the Carmel River, provided that water pumping 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.

Thus condition 2 requires that Cal Am, if obtains water from other sources of supply to make one for one reductions in its unlawful diversions from the Carmel River. Condition 2, however excepts from this requirement water pumped from the Seaside Aquifer that qualifies for exemption under the terms of Condition 4.

Condition 4 provides that "Cal Am shall maximize production from the Seaside aquifer for the purpose of serving existing connections, honoring existing commitments (allocations), and to reduce diversions from the Carmel River to the greatest practicable extent." (emphasis added). It is clear that the SNG site cannot qualify as an "existing connection".[1] Nor does it qualify for an exemption under the existing commitment (allocations) language of Condition 4. Condition 4 was intended to make provision for allocations under the District's pre-1995 allocations to the various jurisdictions within its jurisdiction. Sand City reserved no allocation which contemplated water for this project. Since Condition 2 provides that "water pumped from the Seaside Aquifer shall be governed by Condition 4 of this Order, not this condition" and Condition 4 explicitly does not provide an exception for water pumped from the aquifer to serve a non-existing and non allocated connection and use within its service area, Cal Am's pumping of water for use by SNG on its site must be considered water obtained from "other sources of supply" and governed by the one for one reduction requirement of Condition 2. Water pumped by Cal-Am from the Seaside Aquifer, obtained through acquisition" of an overlying right for use within the Cal-Am service area, should be governed by the one-for-one reduction requirement of Condition 2 of Order 95-10, as amended by Order 98-04.

Sierra Club urges the District to impose such a condition on Cal-Am's application for a water distribution permit and its application to change its service area to include delivery of water to the SNG site that comes from the Seaside Aquifer, rather than the Sand City desal plant. If the District fails to impose such a condition, consistent with Order 95-10, it will have approved a permit that will have no ameliorative effects on the Carmel River in terms of reducing Cal Ams unlawful diversions, and that is not consistent with the provisions of Order 95-10.

By letter this date, Sierra Club is requesting a determination on this issue from the Water Rights Division of the State Water Resource Control Board. If the District is not inclined to make a determination on this issue itself, Sierra Club urges the District to defer action on these applications until the Water Rights Division has made its determination.

Under District Rule 22B (3), in order to protect public trust resources, the General Manager is required to determine "whether the proposed water distribution system would result in significant environmental effects that cannot be mitigated by conditions attached to the

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[1] Water has not been pumped from the SNG site for use on that site for over twenty years. SNG had no "existing connection" to a water source in 1995, or since that date. Its overlying right was only adjudicated in 2003 in the general adjudication of the Seaside Aquifer.

permit". Unless the District approves a water distribution permit that requires the Cal Am pumping from the Seaside Aquifer for the purpose of serving the SNG project to result in a one for one reduction in Cal Am's unlawful diversions from the Carmel River, it is doubtful that the General Manager can lawfully make the determination (finding) required by Ordinance 22B.

Sierra Club has additional concerns with the agency's CEQA compliance in connection with Cal-Am's and the SNG applications. It appears from the staff report prepared for the November 17, 2008 meeting that the staff is relying on an October 2008 Revised Draft Addendum to the EIR for its conclusion that "the Addendum will suffice for purposes of the District as a Responsible Agency, thus fulfilling the requirements of CEQA. (Staff Report, p5). Sierra Club is not aware that the Addendum is anything but a developer created document, that has not been approved by Sand City through a noticed hearing. CEQA Guideline §15162 (b) requires that where a Lead Agency determines that neither project changes, changed circumstances, nor new information triggers the need for a subsequent or supplemental EIR, "the lead agency shall determine whether to prepare …an addendum, or no further documentation." CEQA Guideline §15164 requires that the Lead or Responsible Agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary and require that "the decision-making body [here Sand City as Lead Agency] shall consider the addendum with the Final EIR" and that the Addendum be included in or attached to the final EIR. See Santa Teresa Citizen Action Group v. City of San Jose (2003), 114 Cal.App 4th 689, 702. ("The decision-making body shall consider the addendum with the final EIR prior to making a decision on the project.") Sierra Club is not aware that the City has considered the Addendum or included the Addendum in the final EIR. Given this lack of consideration, and the act that the Addendum was produced for the project proponents Sierra Club lacks assurance that "none of the conditions described in Section 15162…have occurred" as asserted in the staff Report at 5.

Sierra Club requests the Board to consider these matters at its hearing on the application, scheduled for January 29.

Sincerely,

Laurens Silver
California Environmental Law Project

cc: David Laredo, Counsel to MPWMD
Cal-American Water Co.

Law office of Tom Roth
One Market Spear Tower
Suite 3600
San Francisco, Ca 94105

Received via email
4/15/2009