

EXHIBIT 15-R

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January 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

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

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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



Alan C. Lloyd, Ph.D.
Agency Secretary

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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



JAN 31 2006

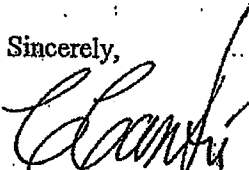
Based on condition 2, diversions from the Seaside aquifer are not subject to the requirement that they be used to offset illegal diversions from the Carmel River by Cal-Am. In accordance with condition 4, Cal-Am is cautioned that any new diversions from the Seaside aquifer should not create nor worsen 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