NOLAND
HAMERLY
ETIENNE
& HOSS

Attorneys at Law | A PROFESSIONAL CORPORATION

received via e-mail on 1/27/2010 at 3:00 PM by H. Stern

WWW.NHEH.COM
E-MAIL DETIENNE@NHEH.COM
831-424-1414 EXT. 224
OUR FILE NO. 18808.000

January 27, 2010

VIA EMAIL AND U.S. MAIL

Ms. Henrietta Stern
Monterey Peninsula Water Management District
P. O. Box 85
Monterey, CA 93942-0085

Re: Hartnett

Dear Henrietta:

Thank you for your recent communication. I trust that your efforts to obtain an exemption for the Hartnett well will be successful.

To give you a little more ammunition, it is important to note that the location of the well is miles from the Carmel River aquifer. The parcel owned by Mr. Hartnett is 85 acres, and there are only two wells within 1,000 feet of this well. The well assessment report prepared by Martin Feeney projects little or no adverse effect.

Cordially,

NOLAND, HAMERLY, ETIENNE & HOSS
A Professional Corporation

Myron E. Etienne, Jr.

MEE:ng

CENTRAL COAST COUNTIES
4825 CROY ROAD
MORGAN HILL,CA 95037
(408) 779-5904

RECEIVED
JAN 25 2010
MPWMD

January 19, 2010

Ms. Henrietta Stern, Project Manager
Monterey Peninsula Water Management District
5 harris Court, Building G
Monterey, CA 93942

RE: Suspension of 'Acceptance' or, 'Processing' of Existing Water Distribution System Permits

Dear Ms Stern:

I am writing on behalf of the professional water well drilling and pump contractors in Monterey County who met at our quarterly dinner meeting last week.

In short, we oppose a temporary suspension of 'acceptance' and/or, 'processing' of existing WDS permits for all wells within the District that derive a water supply for fractured hard-rock aquifers. We feel that this is excessive and unnecessary, considering that the MCHD, MPWD and State of California already have rules and regulations in place regarding well yields and usage for projects and development.

In this time of economic hardship, this suspension would be detrimental to the land owner/applicants and the water well professionals in the area. Thank you for your consideration.

Cordially,

Augie Guardino

Augie Guardino
CGA Central Coast Branch Secretary

Cc: CGA Central Coast Branch Members

MARK A. CAMERON
JOHN S. BRIDGES
DENNIS G. MCCARTHY
JACQUELINE P. MCMANUS
CHRISTOPHER E. PANETTA
DAVID C. SWEIGERT
SARA B. BOYNS
SHARILYN R. PAYNE
BRIAN E. TURLINGTON
AMBER D. PASSNO
CAROL S. HILBURN
SHERYL L. AINSWORTH
TROY A. KINGSHAVEN
IAN E. YOUNG

FENTON & KELLER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
2801 MONTEREY-SALINAS HIGHWAY
POST OFFICE BOX 791
MONTEREY, CALIFORNIA 93942-0791
TELEPHONE (831) 373-1241
FACSIMILE (831) 373-7219
www.FentonKeller.com

LEWIS L. FENTON
1925-2005

OF COUNSEL
CHARLES R. KELLER
RONALD F. SCHOLL
THOMAS H. JAMISON
GARY W. SAWYERS

JOHN S. BRIDGES

JBridges@FentonKeller.com
ext. 238

January 27, 2010

VIA EMAIL (darby@mpwmd.dst.ca.us)

Monterey Peninsula Water Management District Board of Directors
c/o Darby Fuerst, General Manager
5 Harris Court, Building G
Monterey, CA 93940

Re: January 28, 2010, Agenda Item 20 - Proposed Urgency Ordinance Regarding Fractured Rock Wells

Dear Board Members:

There is no factual basis for a determination of emergency that would justify adoption of the above referenced urgency ordinance. Alleged public concern and speculation do not create an emergency. In fact, consideration of prospective regulation of fractured rock wells was underway through normal District procedures until just last week with the expectation that a non-urgency ordinance could be brought before the Board for public discussion at the February meeting. Nothing happened in the last week that created a sudden emergency nor has there been any change whatsoever in the circumstances relative to this issue. The staff report readily admits this fact several times when it states:

> ...it is notable that there is no current evidence in District files that shows environmental degradation or loss of water supply associated with fractured rock wells within the District boundary.

And, with regard to pending complete applications:

> ...There is no evidence that these four projects would result in adverse cumulative impacts.

And, with regard to all pending permit applications (whether complete or not):

> ...There is no evidence that these limited numbers of applicants with projects throughout the District would result in an adverse cumulative impact to water resources.

Indeed, the available evidence concludes that speculative concern about potential cumulative impacts is unfounded (reference the January 4, 2010, letter from Bierman Hydrogeologic, with which the District's Water Resources Manager and the District's own hydrogeology consultant (Pueblo Water Resources) generally concur). In addition, as an example, the hydrogeological well assessment report prepared by Martin Feeney for the pending Bronson/Chopin application (APN 009-012-013) concludes the Bronson/Chopin well will have an insignificant and unmeasurable impact on surrounding wells or sensitive receptors (see Attachment 1 excerpt). Mr. Feeney's analysis was peer reviewed by the District's Water Resources Manager, Joe Oliver, and Mr. Oliver reached the same conclusion. In fact the well yield for the Bronson/Chopin well is over 60 times the maximum day 12-hour demand (see Attachment 2 excerpt). It is worth noting that the Bronson/Chopin well was also approved by the Monterey County Planning Commission last year. An appeal of that approval is scheduled for final action by the Board of Supervisors next Tuesday, February 2, 2010.

Finally, to corroborate comments from your District staff as well as Monterey County Health Department staff regarding WDS applicants' investment of time and resources in the process, the Bronsons, again as an example, have incurred costs to date related to their well in excess of $95,000 (see Attachment 3). I'm sure other pending applicants have also incurred significant costs.

In summary, there is no emergency and there is no legal or factual basis for the adoption of an urgency ordinance. In any event, pending WDS applicants like the Bronsons and others should, in fairness, be allowed to proceed. If the District desires to consider future study and/or regulation of fractured rock wells it certainly can do so prospectively and in accordance with normal procedures, full disclosure and public debate, and adequate due process for property owners.

Very truly yours,

FENTON & KELLER
A Professional Corporation

John S. Bridges

JSB:kmc
Enclosures

cc: Board Member Alvin Edwards
Board Member Judi Lehman
Board Member Kristi Markey
Board Member Regina Doyle
Board Member Bob Brower
Board Member David Pendergrass
David Laredo, District Legal Counsel
Henrietta Stern
Mr. & Mrs. Bronson

H:\documents\kmc.010qpkd.doc

Martin B. Feeney
Consulting Hydrogeologist

ATTACHMENT 1

P.G. 4634
C.E.G. 1454
C.Hg 145

WELL ASSESSMENT REPORT
Bronson Well – Carmel Valley Uplands Area

PURPOSE AND SCOPE

The purpose of this report is to document the testing of the subject well in accordance with the testing procedures adopted by the Monterey County Environmental Health Department (MCEHD) and Monterey Peninsula Water Management District (District). The document includes analysis of the collected data in accordance with the procedures outlined by the District in the document entitled Procedures for Preparation of Well Source and Pumping Impacts Assessments dated September 2005. The specific requirements for well assessment reports depend on the hydrogeologic setting and the proposed use for the well. The well is constructed in fractured bedrock and is more than 1,000 feet from the mapped edge of the Carmel River alluvium. The proposed use of the well is to support a single-family residence. A pre-application was submitted and the District has determined that the appropriate level of analysis is Level 2, Setting 2. This document is designed to meet the requirements of this level of analysis.

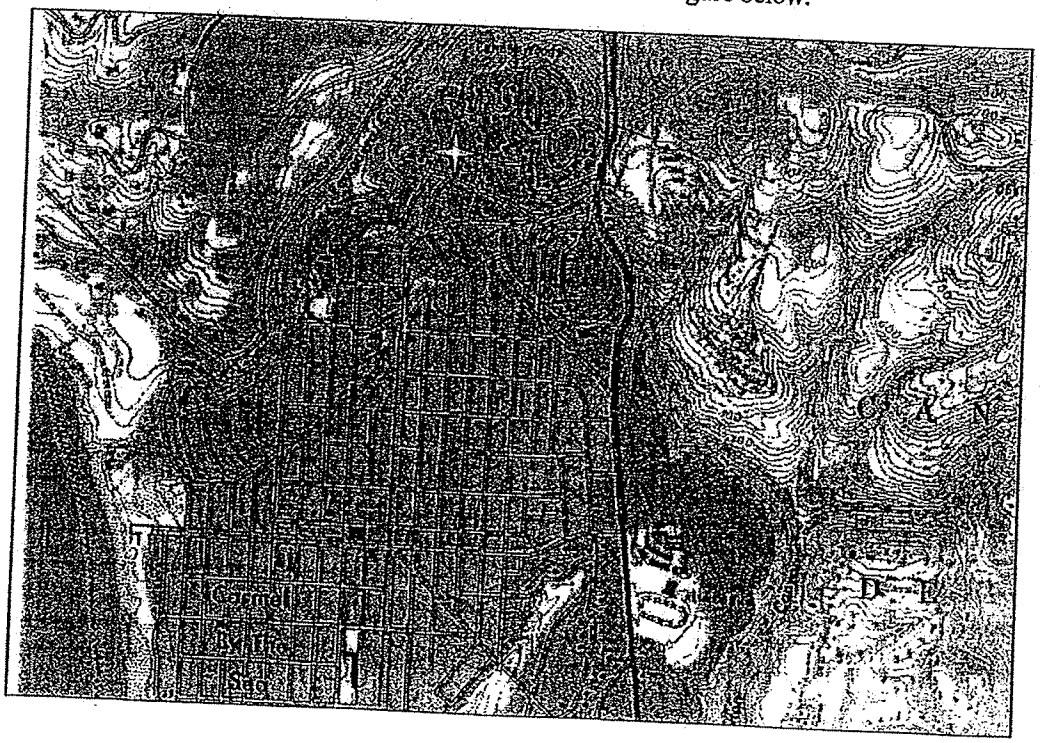
WELL SPECIFICS

Well Name: Bronson Well
Physical Address: 24479 San Juan Rd., Carmel, CA
Elevation: ~ 449 feet (from USGS topo)

Owner : Lyn and Rene Bronson

Lot Size: ~ 0.5 acres

The well was drilled and completed to a depth of 380 feet by Maggiora Brothers Drilling of Watsonville, California. The casing is 5-inch diameter PVC with intermittent perforations between depths of 180 to 380 feet. Review of the drillers log indicates the well bore encountered the Monterey Shale from the surface to total depth. This author was not involved in well siting, design, construction, or testing of the well. The well log is included in the Appendix and the design information is shown on the Summary Table. The location of the well site is indicated by the star in the Figure below.



P.O. Box 23240, Ventura, CA 93002 ♦ Phone: 805/643-7710 ♦ e-mail mfeeney@ix.netcom.com

WATER QUALITY

Water quality samples were collected at the completion the test pumping and analyzed by Monterey Bay Analytical Services. The laboratory analysis reveals the water to be of a sodium-chloride chemical character with a total dissolved solids concentration of 1,440 milligrams per liter (mg/l). The water meets drinking water standards for all primary (health based) drinking water standards. The water exceeds secondary standards (esthetic based) for chloride (502 mg/l verses standard of 250 mg/l). The water is also extremely hard. In general, water quality is fair for fractured bedrock aquifers in the area. The full laboratory report is included in the Appendix.

CONCLUSIONS

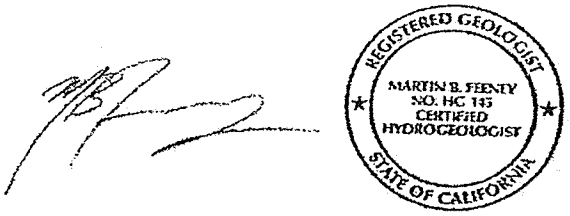
- During the testing period, the well displayed conventional drawdown response and recovery. No evidence of boundary conditions or well interference was observed. Based on the data collected and the observed response, the well performance meets the regulatory standards for the proposed use.
- Based on the analysis of the data developed during the pumping test, the subject well will have an insignificant and unmeasurable impact on surrounding wells or sensitive receptors. Theoretical drawdown impacts at a distance 1,000 feet are calculated at less than a tenth of a foot.

CLOSURE

The performance of wells producing from fractured bedrock can be highly variable. This report documents the performance of the well at the time of testing. Climatic or seasonal changes and the actions of other pumpers in the area can affect future well performance. Environmental changes, either naturally occurring or artificially induced, may cause the quality and/or quantity of water produced to change with time. This report expressly does not constitute a guarantee of future performance.

--oo --

Date: November 17, 2008



Martin B. Feeney

ATTACHMENT 2

TECHNICAL MEMORANDUM
Pueblo Water Resources, Inc.
4478 Market St., Suite 705
Ventura, CA 93003
Tel: 805.644.0470
Fax: 805.644.0480

PUEBLO water resources

To: MPWMD
Date: February 6, 2009
Attention: Joe Oliver, P.G., C.Hg, Water Resources Manager
Project No: 06-0013
Copy to: Henrietta Stern, Matthew Sundt
From: Robert Marks, P.G., C.Hg
Subject: Review of Well Source and Pumping Impact Assessment for Chopin/Bronson Well, APN 009-012-013

INTRODUCTION

Presented in this Technical Memorandum is a summary of our findings and conclusions based on our review of the above-referenced assessment report. The assessment report, dated November 17, 2008, was prepared for Lyn and Rene Bronson by Martin B. Feeney, C.Hg. It is our understanding that the subject parcel was subsequently purchased by Chopin Enterprises, who submitted the assessment report in support of a Water Distribution System (WDS) permit application for the property. An existing well located on the parcel, identified herein as the Chopin/Bronson Well, is proposed to be utilized to supply potable and exterior landscape irrigation water to a conceptual single family residence to be constructed in the future on the subject parcel.

Our review focused on evaluating the assessment report for compliance with the MPWMD Procedures for Preparation of Well Source and Pumping Impact Assessments (MPWMD Procedures), dated September 2005 (revised May 2006). A summary of our findings is presented below.

FINDINGS

Hydrogeologic Setting

The proposed WDS and subject well are located in the Carmel Woods area. The well is greater than 1,000 feet from the mapped boundary of the Carmel Valley Alluvial Aquifer (CVAA), and is completed with perforations in fractured shale of the Monterey Formation. As such, Hydrogeologic Setting #2 of the MPWMD Procedures is applicable to this well.

CONCLUSIONS

Based on our review of the subject assessment report, we offer the following conclusions:

Well Capacity

The maximum day 12-hour demand for the subject WDS was calculated to be approximately 0.93 gpm, which is significantly less than the calculated well yield of 57.52 gpm; therefore, based on MPWMD Procedures the well capacity is considered **sufficient** for the **0.5 afy** annual demand for this WDS.

Water Quality

The water quality results indicate that the water met all of the Maximum Contaminant Level (MCL) drinking-water standards for primary inorganic constituents; however, the water exceeded the recommended MCLs for a few secondary (aesthetic consumer acceptance-based) constituents; therefore, the MCHD should be consulted regarding treatment recommendations and/or requirements for this source and WDS.

Analysis of Offsite Impacts

Analysis of projected drawdown at offsite wells as a result of pumping the subject well to meet the demands of the subject WDS indicates that the impacts should not be significant. There are no SERs located within 1,000 feet of the subject well.

CLOSURE

This memorandum has been prepared exclusively for the Monterey Peninsula Water Management District for the specific application to processing of a Water Distribution System permit. The findings and conclusions presented herein were based on our review of the subject assessment for compliance with MPWMD Procedures. No other warranty, express or implied, is made.

It is noted that the long-term sustainable capacity and offsite impacts of wells completed in fractured-bedrock settings is dependant on a variety of factors that cannot be fully evaluated through analysis of relatively short-duration pumping tests. The movement and long-term availability of groundwater in these materials is controlled by the occurrence, connectedness, and distribution of fractures. The distribution and connectedness of fractures to sources of recharge are essentially random, and the volume of groundwater in storage in these systems is often

ATTACHMENT 3

Chopin Enterprises
Expenses Incurred for Producing a Well
San Juan Street, Carmel
2007 to Present

Nature of Expense		Amount
Maggiora Bros. - Drilling Expense		$33,943.28
Erik Dyar - Site preparation planning		$22,164.35
Botanical Planning Services		$500.00
Archeological Consultancy		$600.00
Martin Feeney - Hydrologist		$3,699.75
Jon Hagemeyer - surveyor		$800.00
Frank Ono - Arborist		$675.00
MPWMD - fees and permits		$2,590.00
County of Monterey - permits & fees		$6,303.37
Fenton & Keller - legal fees		$24,000.00
	Total	**$95,275.75**

MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT

5 HARRIS COURT, BLDG. G
POST OFFICE BOX 85
MONTEREY, CA 93942-0085 • (831) 658-5600
FAX (831) 644-9560 • http://www.mpwmd.dst.ca.us

January 27, 2010

TRANSMITTED VIA E-MAIL AND U.S. MAIL ON 1/28/2010

Myron Etienne, Jr.,
Noland, Hamerly, Etienne, and Hoss
P.O. Box 2510
Salinas, California 93902

SUBJECT: RESPONSE TO JANUARY 27, 2010 LETTER RE: PROPOSED MPWMD URGENCY ORDINANCE NO. 143 EFFECT ON "HARTNETT" WDS

Dear Mr. Etienne:

This letter responds to your letter dated January 27, 2010 (attached, received via e-mail), in which you provide reasons why the Hartnett application should be excluded from the proposed Urgency Ordinance No. 143 that will be considered by the Monterey Peninsula Water Management District (MPWMD or District) Board of Directors on January 28, 2010. The ordinance, if adopted, would impose a 120-day temporary suspension of permit processing of existing and new Water Distribution System (WDS) applications.

I am writing this letter because your letter inaccurately implies that MPWMD staff advocate for specific applicants in policy matters before the Board, which is not correct. Staff is not engaging in "efforts to obtain an exemption for the Hartnett well." Instead, as explained in the staff report to the Board, both MPWMD and Monterey County Health Department (MCHD) staff recommend that <u>any</u> application for a well on a parcel that is not in the California American Water (CAW) service area be excluded from the ordinance, as these parcels are typically large and have no other source of supply.

Your second paragraph describes giving me "more ammunition" regarding the merits of the Hartnett application. Please note that my staff presentation focuses on technical and policy issues affecting all applicants, and does not address any specific application. It is recommended that you attend the meeting if you wish to present information about your client's situation. Your January 27, 2010 letter will be provided to the Board, along with all other letters received. This letter will also be provided to the Board for the record.

Sincerely,

Henrietta Stern

Henrietta Stern
Project Manager

Cc: Darby Fuerst, General Manager

U:\Henri\wp\ceqa\2010\WDS2010\HARTNETT_2010\Hartnett_EttieneOrd143_20100127.doc
Prepared by H. Stern on 1/27/10

CAÑADA WOODS WATER COMPANY

PO Box 221850

Carmel, CA 93922

(831)656-9266 Fax: 656-9480

RECEIVED
JAN 28 2010
MPWMD

VIA FACSIMILE AND EMAIL

January 28, 2010

Chair Markey and Members of the MPWMD
Board of Directors
5 Harris Court, Building G
PO Box 85
Monterey, California 93942

Re: MPWMD January 28, 2010 Agenda Item No. 20

Consider Adoption of Urgency Ordinance No. 143 Temporarily Suspending Processing and Receipt of Applications for Water Distribution Systems in Fractured Rock Formations

Dear Chairperson Markey and Members of the Monterey Peninsula Water Management District (MPWMD) Board of Directors:

It has come to our attention that the Monterey Peninsula Water Management District Board will be considering the adoption of an urgency ordinance during your January 28, 2010 meeting, which involves the suspension of processing and receipt of applications for water distribution systems supplied by wells drilled in fractured rock. The proposed ordinance is being considered in order to enable the District staff to focus on concerns expressed by members of the public regarding the drilling of wells on small lots in urban areas, and related concerns regarding adequate area for groundwater recharge and well replacement on these smaller lots.

We were pleased to see that the Water Management District staff and the Monterey County Health Department staff have recognized that the

Canada Woods Water Company (CWWC), as an independent public utility water company serving the Tehama and Monterra subareas, should not come within the purview of this ordinance. Under Section Five A(1) of the proposed ordinance, an exception would be provided for parcels outside of the California American Water service area. The CWWC is currently permitted to provide water service to a defined service area within the Tehama and Monterra subareas, and has a maximum quantity of water that has already been determined to be sustainable for 100% of the planned and approved uses within the CWWC service boundary. Moreover, all of the properties within the CWWC service area are prohibited from drilling individual wells on their property. Thus, any applications filed by the CWWC would be exempt under Section Five A(1), and CWWC supports this exception. However, for clarification purposes, we request that the District add the language "Any existing public utility or" prior to the language "any parcel that is outside of the CAW service area" to Section Five (A)1.

Moreover, under Section Five A(6) of the proposed ordinance recommended by the District and Environmental Health staff, an exception would be provided for "Qualified Exemption Requests" for existing or replacement wells. The District staff report identifies a pending request by the Canada Woods Water Company for replacement of some of its older wells as the type of exemption request fitting within this exception (and any other potential future requests for "existing or replacement wells"). (See staff report, Exhibit 20-B)

Again, the Canada Woods Water Company already has an approved water distribution system permit, and extensive environmental review has already been undertaken to support the Canada Woods Water Company water system. Since 2008, the Canada Woods Water Company has been awaiting the District's approval of a minor amendment to replace some of its older wells with newer wells that have better water quality and hence will reduce treatment related costs. Unfortunately, a backlog in the District's processing has already resulted in a nearly two year delay in staff's processing of Canada Woods Water Company's minor amendment to its existing WDS as issued by your District. The Canada Woods Water Company has an obligation as a public utility to serve its customers, and further delay in processing will result in undue burden and expense. As such, we agree that the general category of exemptions under Section Five A(6) is appropriate to be exempted.

Conclusion

So, in summary we are pleased that the District Board recognizes the urgency ordinance should not apply to the Canada Woods Water Company. We respectfully request that if the MPWMD proceeds with this urgency ordinance that **the District Board include the following change to the exception under Section Five A(1) so it reads as follows:**

> ***(1) Any existing PUC water utility or any parcel that is outside of the CAW service area.***

Finally, we would request that you **approve the exception under Section Five A(6) for Qualified Exemption Requests** as recommended by District and Environmental Health staff.

Thank you for your consideration.

Sincerely,

Canada Woods Water Company

R. Alan Williams, Manager

Arlene Tavani

From: steve dallas [sgdallas@yahoo.com]
Sent: Wednesday, January 27, 2010 6:20 PM
To: Arlene Tavani
Subject: Fw: Jan. 28 Water Management District meeting

Hi Arlene,

This email from Barbara Livingston was sent to me but it is for you. Barbara did not have your email.

Also could you please email me any and all letter that came in on Urgency Ordinance #143 .

Thank you
Steve Dallas

--- On **Tue, 1/26/10, Barbara Livingston** ***<barbaratlivingston@earthlink.net>*** wrote:

> From: Barbara Livingston <barbaratlivingston@earthlink.net>
> Subject: Jan. 28 Water Management District meeting
> To: sgdallas@yahoo.com
> Date: Tuesday, January 26, 2010, 1:34 PM
>
> TO: Directors of the Water Management District
> SUBJECT: Drilling of wells
> AGENDA ITEM: Urgency Ordinance # 143
>
> Dear Directors:
>
> I strongly urge you to adopt Urgency Ordinance #143 which would temporarily suspend the processing and receipt of applications for water distribution in fractured rock formations and on small lots. Thank you for your consideration or my remarks.
>
> Sincerely,
> Barbara Livingston
> Carmel