

CALIFORNIA ENVIRONMENTAL LAW PROJECT  
A Non-Profit Legal Corporation



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August 13, 2010

Sent Via Electronic Mail

Regina Doyle, Chair  
Board of Directors  
Monterey Peninsula Water Management District  
5 Harris Court, Box 85,  
Monterey, CA 93942-0085

Re: Joint Application of Cal-Am and SNG For A Water Distribution Permit

Dear Ms. Doyle and Members of the District Board:

Sierra Club would like to make several observations concerning the Staff Report prepared for the meeting on the 17<sup>th</sup> of August.

On page 17, the discussion of finding 12 relating to cumulative impacts of the WDS permit does not include any consideration of the cumulative impacts of the triennial reductions required under the Adjudication that are associated with the permit. As pointed out in the August 11 letter the District has not considered as a cumulative impact the 2012 triennial reductions ordered under the adjudication (when considered in light of assessment penalties for exceeding the production allowance) that will provide strong incentives to Cal-Am to shift some of its production burden to the River. If such cumulative impacts are considered it will not be possible, on the basis of existing evidence, for the District Board to find that "the cumulative effects of issuance of this WDS permit do not result in significant adverse effects to the source of supply or the species and habitats dependent on the source of supply due to actions by the Superior Court to reduce Seaside Pumping to the natural safe yield."

Secondly, the Statement at p. 15 is facially preposterous and portrays a misunderstanding of the Adjudication:

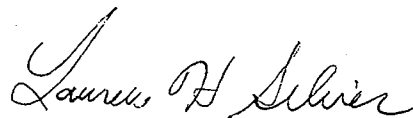
"Notably, the Seaside Basin Adjudication requirement for CAW customers to reduce Seaside Basin Coastal Subarea use by 418 AF in year 2012, with another reduction of 418 AF in 2015, provides more than adequate supply to ensure that MBSE can be served by CAW facilities in the Seaside Basin. Recall that the SNG water right to 149 AFY does not change; thus 90 AFY will remain available for CAW to supply to MBSE while other CAW customers must reduce their consumption."

There is no dispute that there will be adequate water for SNG. However, the inference that "CAW customers must reduce their consumption" is based upon a mistaken interpretation of the Adjudication. CAW customers are under no obligation to reduce their consumption and will do so only if Cal-Am cannot use Carmel River Water to supply them. It is Cal-Am, as the dominant Standard Producer that will be curtailed in its pumping from the Basin. While it curtails its production and continues to serve SNG, it is free to divert more from the River to serve its other customers and to make up for its production losses in the Basin. There is no attempt, through the proposed water accounting-protocol conditions, to treat any such production from the Carmel River associated with this WDS as a cumulative impact that needs to be mitigated. One obvious mitigation requirement would be that if the "accounting" determines that there has been a shift in production from the Basin to the River that it be counted as Cal-Am production from the River.

In the Shute, Mihaly, Weinberger memo dated 8/11/10, it is stated that "the Court is likely to conclude that any incentive to increase diversions from the Carmel River is a result of that decision (the Court's decision to grant SNG 49 afy and the Court's establishment of replenishment fees) and not the Application itself." (Memo at 5). That statement is true, it supports Sierra Club's cumulative impacts argument, since the Adjudication is a "project" within the holding of *Friends of Eel River*, cited in the August 11 letter.

Counsel's memo of 8/11/10 was not addressed to cumulative impacts, nor to *Friends of Eel River*, discussed in the Sierra Club's August 11 letter. It is clear, however, that to the extent the Court intended that the triennial 10% reduction take place in 2012 (and again in 2015) while service to SNG as an overlying rights holder continue, these operative conditions of the Adjudication, under *Friends of Eel River*, should be considered a cumulative impact associated with the Project. In fact, the most likely interpretation of the Adjudication Decision is that the Court did intend Cal-Am production for its other customers to be curtailed (by 10%) while it served SNG with its full water right and did not intend Cal-Am to make up for that production "loss" from the Seaside Basin by increasing diversions from the Carmel River.

It would be consistent with the intent of the Adjudication for the District Board to consider the triennial reductions as a cumulative impact of this Project, to consider it significant, and to condition the WDS permit in such a manner as to remove any Cal-Am incentive to shift its production "burden" to the River by treating any such shift identifiable through water accounting protocols as production from the Carmel River.



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cc: Vicky Whitney,  
SWRCB, Water Rights Division