MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

Supplement to 11/15/10 MPWMD Board Packet

Attached are copies of letters received between October 9, 2010 and November 8, 2010. These letters are also listed in the November 15, 2010 Board packet under item 18, Letters Received.

Author	Addressee	Date	Topic
Bill Casale, U.S. Army Corps of Engineers	Joseph Oliver	10/5/10	Fort Ord Monitor Well Network
Jane Hicks, U. S. Army Corps of Engineers	Andy Bell	10/8/10	U.S. Army Corps of Engineers Nationwide Permit for 2010 Carmel River Vegetation Management Project
John O'Hagen, State Water Resources Control Board	Mark Stilwell	10/12/10	Pebble Beach Company Water Entitlement
Lew C. Bauman, County of Monterey	Regina Doyle	10/14/10	Application of California American Water to California Public Utilities Commission – Request for Imposition of Moratorium
Ken Vecchiarelli, Yorba Linda Water District	Darby Fuerst	10/21/10	Urgent – Amicus Curiae Letter Assistance
Barbara Evoy, State Water Resources Control Board	Craig Anthony	10/21/10	SWRCB Order WR 2009-0060 – Amended ASR Operating Plan
Joyce Ambrosius, National Marine Fisheries Service	Margaret Paul	10/25/10	Disbursement of California American Water Settlement Agreement Funds

U:\staff\word\boardpacket\2010\20101115\LtrPkt\20101115.doc

5 Harris Court, Building G, Monterey, CA 93940 • P.O. Box 85, Monterey, CA 93942-0085
831-658-5600 • Fax 831-644-9560 • http://www.mpwmd.dst.ca.us

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922

REPLY TO
ATTENTION OF:

RECEIVED
OCT 12 2010
MPWMD

October 5, 2010

Acquisition and Management Branch

Monterey Peninsula Water Management District
Attention: Joseph W. Oliver, Water Resources Manager
P.O. Box 85
Monterey, CA 93942

Dear Mr. Oliver:

The U.S. Army Corps of Engineers is in receipt of your letter dated September 28, 2010 requesting renewal of License No. DACA05-3-04-522A. The Corps can issue an amendment to the license for an additional five-year term. Administrative costs for preparing and processing an amendment to the license will be $1,000. Please remit payment without delay to the attention of CESPK-RE-T, Mrs. Vicki Marino, US Army Engineering District, Sacramento, 1325 J Street, Sacramento, California 95814-2922.

Pursuant to our phone conversation, the Corps will move forward with the extension of the license pending receipt of funds and should you decide to move forward with an easement interest, you may contact Ms. Juliette Sager at (831) 242-7905 or via email at Juliette.Sager@us.army.mil.

Please contact Bonievee Aviles, Realty Specialist, at (916) 557-7738 or via e-mail at Bonievee.M.Aviles@usace.army.mil.

Sincerely,

Bill Casale

Bill Casale
Chief, Military Section

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1398

RECEIVED
OCT 15 2010
MPWMD

Regulatory Division

OCT 08 2010

SUBJECT: File Number 244600S

Andrew Bell
Monterey Peninsula Water Management District
5 Harris Court, Building G
P.O. Box 85
Monterey, California 93942-0085

Dear Mr. Bell:

This letter is written in response to your submittal of June 1, 2010 concerning Department of the Army authorization to place large woody debris within jurisdictional waters of the United States. The proposed project involves the placement of cut branches and tree trunks along streambanks to provide erosion protection and shade and cover for aquatic species habitat restoration. The project also includes vegetation removal utilizing chainsaws, loppers and other hand tools within the active river channel. Activities will take place along a total of 2,400 lineal feet at nine sites along the Carmel River from River Mile 1.0 to River Mile 15.0, Monterey County, California.

Based on a review of the information you submitted, your project qualifies for authorization under Department of the Army Nationwide Permit 27 – *Aquatic Habitat Restoration, Establishment, and Enhancement Activities* (72 Fed. Reg. 11092, March 12, 2007), pursuant to Section 404 of the Clean Water Act (33 U.S.C. Section 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403). See Enclosure 1. All work shall be completed in accordance with the plans and drawings titled "2010 Vegetation Management Areas" submitted October 8, 2010 (Enclosure 2).

The project must be in compliance with the General Conditions cited in Enclosure 3, the San Francisco District's Regional Conditions cited in Enclosure 4, and any special conditions specified in this letter for this Nationwide Permit authorization to remain valid. Non-compliance with any condition could result in the suspension, modification or revocation of the authorization for your project, thereby requiring you to obtain an Individual Permit from the Corps. This Nationwide Permit authorization does not obviate the need to obtain other State or local approvals required by law.

This verification is valid until the NWP is modified, reissued, or revoked. All of the existing NWPs are scheduled to be modified, reissued, or revoked prior to March 18, 2012. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice

when the NWPs are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this nationwide permit. Upon completion of the project and all associated mitigation requirements, you shall sign and return the Certification of Compliance, Enclosure 5, verifying that you have complied with the terms and conditions of the permit

To ensure compliance with this Nationwide Permit authorization, the following special conditions shall be implemented:

1. This Corps permit does not authorize you to take an endangered species. In order to legally take a listed species, you must have a separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit or a Biological Opinion (BO) under ESA Section 7 with "incidental take" provisions with which you must comply). The enclosed U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) BOs dated August 18, 2010 and August 30, 2010 respectively contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BOs. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take authorized by the attached BOs, whose terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BOs, where a take of the listed species occurs, would constitute an unauthorized take and it would also constitute non-compliance with this Corps permit. The FWS and NMFS are the appropriate authorities to determine compliance with the terms and conditions of their BOs and with the ESA.

2. All staging, maintenance, and storage of heavy machinery shall be conducted in such a location and manner that no fuel, oil, or other petroleum products may run off or be washed by rainfall into the water.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

Should you have any questions regarding this matter, please call Kyle Dahl of our Regulatory Division at (415) 503-6783. Please address all correspondence to the Regulatory Division and refer to the File Number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available online at http://per2.nwp.usace.army.mil/survey.html.

Sincerely,

Jane M. Hicks
Chief, Regulatory Division

Enclosures

Copy furnished (w/o enclosures):

US FWS, Ventura, CA
US NMFS, Santa Rosa, CA
CA RWQCB, San Luis Obispo, CA

State Water Resources Control Board

Linda S. Adams
Secretary for Environmental Protection

Division of Water Rights
1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
FAX: 916.341.5400 ♦ www.waterboards.ca.gov/waterrights

Arnold Schwarzenegger
Governor

OCT 12 2010

In Reply Refer To:
JWC:(27-01, Carmel River)

RECEIVED
OCT 21 2010
MPWMD

Mark Stilwell, Vice President
Pebble Beach Company
P. O. Box 1767
Pebble Beach, CA 93953

Dear Mr. Stilwell:

PEBBLE BEACH COMPANY'S CERTIFICATION UNDER ORDER WR 2009-0060, AS AMENDED BY ORDER WR 2010-0001, WATER ENTITLEMENT WITH MONTEREY PENINSULA WATER MANAGEMENT DISTRICT IN MONTEREY COUNTY

Thank you for your letter dated September 30, 2010 concerning the Pebble Beach Company's (PBC) certification under Order WR 2009-0060, as amended by Order WR 2010-0001. Condition 3.a (6) of the 2009 Order, as amended, requires that PBC:

Annually submit, on September 30, a report to the Deputy Director for Water Rights accounting for any additional water that is diverted from the Carmel River as the result of an increased use of its MPWMD water entitlement. Increased diversions from the river by Cal-Am to satisfy PBC entitlements from MPWMD shall be added to the adjusted base, and are not subject to section 2 of this order. Water Diverted from the river by Cal-Am for PBC entitlements can only be served to properties that have received a PBC entitlement from MPWMD and which are located in the Cal-Am's service area. After December 31, 2016, Cal-Am shall not illegally divert water from the river to supply the holders of PBC entitlements." (Underline emphasis added)

Your letter states the total amount of the Water Entitlement that has been used, or approved for use, by Monterey Peninsula Water Management District (MPWMD) during the period from February 1, 2010 to August 31, 2010, through issuance of MPWMD water connection permits, is 1.096 acre-feet (af). You also state that this amount is incremental to the 36.352 af of Water Entitlement usage for the period prior to February 1, 2010, previously reported. You clarify that the 1.096 af of incremental usage consists of 0.0 af of approved usage by PBC and 1.096 af of approved usage by residential property owners who purchased a portion of PBC's Water Entitlement pursuant to MPWMD's Ordinance 109 and related rules and regulations. You understand from my letter dated September 20, 2010, that this 1.096 af of incremental Water Entitlement usage will be added to Cal-Am's adjusted base amount, and will not be subject to section 2 of the Order. My September 15th letter presumed that PBC or MPWMD would submit a completed annual report by September 30, 2010, and based on that report, the State Water Resources Control Board (State Water Board) could make the appropriate change to Cal-Am's adjusted base amount. Before making a final determination of any adjustment, however, the above condition requires an accounting of the amount of additional water that is diverted from the Carmel River as the result of an increased use by PBC's Water Entitlements. Your letters certifies a total of 37.448 af of Water Entitlement usage but does not identify the source of water serving these connections. Until that clarification is made, I hesitate to recommend any adjustment to Cal-Am's adjusted base amount.

You also request that PBC be allowed in the future to submit the required information on October 15th of each year instead of September 30th. Apparently, PBC does not get the necessary data from MPWMD for September by the end of that month and you would like to consolidate the entire water year useage into one report. Unfortunately, the Division of Water Rights (Division) cannot change the Amended Order as adopted by the State Water Board. However, the Division does have discretion and can work with PBC if the yearly data is received timely on an acceptable date and contains all the information necessary to make a determination on this issue from PBC's report.

I recommend that PBC meet with MPWMD and Cal-Am and then with Division staff to work out an acceptable solution to this annual reporting requirement. If there are any questions concerning this matter or if you would like to meet with Division staff, please contact me or Mark Stretars at (916) 341-5345.

Sincerely,

John O'Hagan, Manager
Enforcement Section

cc: Robert MacLean, President
California American Water
P.O. Box 951
Monterey, CA 93940

Darby Fuerst, General Manager
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93940

MONTEREY COUNTY

COUNTY ADMINISTRATIVE OFFICE

LEW C. BAUMAN
COUNTY ADMINISTRATIVE OFFICER

168 West Alisal St, 3rd Fl
Salinas CA 93901-2680
(831) 755-5115
FAX (831) 757-5792
www.co.monterey.ca.us

RECEIVED
1 8 2010
MPWMD

October 14, 2010

Regina Doyle
Chair
Monterey Peninsula Water Management District
5 Harris Court, Bldg G
Monterey CA 93940

Re: Application of California American Water to the California Public Utilities Commission (CPUC) requesting imposition of an immediate moratorium for the Monterey Peninsula (A.10-05-20)

Dear Ms. Doyle:

Thank you for your letter of October 1, 2010 regarding Application of California American Water's request with the CPUC seeking authorization to impose a moratorium on new or expanded water service connections in its Monterey District. I have forwarded this matter to Curtis Weeks, General Manager, Water Resources Agency, to follow-up on this matter. In the interim, please do not hesitate to contact Mr. Weeks at 831-755-4896.

Sincerely,

Lew C. Bauman
County Administrative Officer

LCB:mbz

cc: Curtis Weeks

Yorba Linda Water District

Reliable and Trusted Service for More Than 100 Years

RECEIVED

26 2010

MPWMD

October 21, 2010

Darby Fuerst
Monterey Peninsula WMD
PO Box 85
Monterey, CA 93942

Subject: **URGENT - Amicus Curiae Letter Assistance**

Dear Mr.Fuerst:

The water community needs your help:

The Yorba Linda Water District (YLWD) has been sued in an inverse condemnation action alleging that YLWD provided inadequate water service for fire suppression during a major fire storm. If plaintiffs succeed with this inverse condemnation suit, all water agencies and cities providing water service for fire protection throughout the state of California, will undoubtedly face liability for the loss of property, structures, and lives in *any* fire.

How you can help:

Please consider asking your legal counsel to write an Amicus Curiae letter to the California Supreme Court in support of YLWD's "Petition for Review".

If inverse condemnation claims stemming from a catastrophic fire storm are successful, agencies will have no hope to defend themselves against inverse condemnation claims stemming from any fire:

The Freeway Complex Fire of November 2008 was exceptionally fast moving, threatening 9,400 homes and requiring the evacuation of 40,000 people while burning 30,300 acres along a 10 mile front in less than 36 hours. YLWD's water system performed well in support of firefighting resources to protect the vast majority of homes threatened by the fire. Regardless of the water system's positive performance, several Yorba Linda residents who lost their homes brought lawsuits alleging that YLWD's water supply system was inadequate and / or failed to provide sufficient water supplies to plaintiffs' homes. Historically, the Government Code's "firefighters immunities" have shielded water suppliers from fire related liability. However, these statutory immunities do not extend to inverse condemnation actions, where liability is predicated on an agency's taking or damaging of property under the California Constitution.

The Orange County Superior Court heard YLWD's defenses to the lawsuits. With regard to inverse condemnation, the court overruled YLWD's defenses and held that the firefighting immunities did not apply, allowing those claims to proceed to trial.

1717 E. Miraloma Avenue Placentia, CA 92870 714-701-3000 714-701-3058 Fax

Yorba Linda Water District

Recognizing the potential for water suppliers throughout the state to be held liable for inverse condemnation, the ACWA-JPIA insisted that YLWD file a "Petition for Writ of Mandate" with the Appellate Court in June 2010. This petition was denied on October 7, 2010. Again, at the insistence of the ACWA-JPIA, YLWD has now filed a "Petition for Review" with the California Supreme Court.

Counsel for YLWD has indicated that the filing of multiple Amicus Curiae letters by legal counsel for other water suppliers, in support of YLWD's position, is crucial for a favorable ruling with the Supreme Court. It is now imperative that the water community forestall the extension of inverse condemnation liability to an instance wherein a water supplier did not cause damage to plaintiffs' homes and instead allegedly did not supply enough water. Should plaintiffs be allowed to bring inverse condemnation claims against water suppliers because they allegedly did not build a system with enough water for any given fire, water suppliers will become the de facto insurers against fire damage.

YLWD requests that you allow your legal counsel to prepare an Amicus Curia letter in support of YLWD's "Petition for Review." The Case number is S187414. Should your legal counsel have any questions with regard to the preparation of an Amicus Curiae letter, please have your legal counsel contact legal counsel for YLWD, Laurie Ellen Park, at McCormick, Kidman, & Behrens, LLP at (714) 755-3100. The deadline to submit an Amicus Curiae letter to the Supreme Court is November 8, 2010. For your legal counsel's reference, the "Petition for Review" submitted to the California Supreme Court, in addition to the Amicus Curiae letter previously submitted by ACWA for the June 2010 "Petition for Writ of Mandate" filing can be found at www.ylwd.com/fcf.html. An E-Currents article providing additional information on this subject is also available for download.

Should you have any other questions regarding this matter, please feel free to contact me directly at (714) 701-3022 or Pat Grady, Assistant General Manager at (714) 701-3023. Thank you in advance for your consideration of this very important matter.

Sincerely,

Kenneth R Vecchiarelli

Ken Vecchiarelli
General Manager

Cc: Board of Directors
Michael Berger, Manatt, Phelps & Phillips
Linda Bauermeister, Barber & Bauermeister
Art Kidman, McCormick, Kidman & Behrens

State Water Resources Control Board

Linda S. Adams
Secretary for Environmental Protection

Division of Water Rights
1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
FAX: 916.341.5400 ♦ www.waterboards.ca.gov/waterrights

Arnold Schwarzenegger
Governor

In Reply Refer to:
JWC:(27-01, Carmel River)

RECEIVED
2 5 2010
MPWMD

OCT 21 2010

Craig E. Anthony,
Director of Operations – Monterey
511 Forest Lodge Road, Suite 100
Pacific Grove, CA 93950

Dear Mr. Anthony:

SWRCB ORDER WR 2009-0060, AMENDED AQUIFER STORAGE AND RECOVERY OPERATING PLAN FOR CALIFORNIA AMERICAN WATER - MONTEREY COUNTY

Thank you for your letter dated September 21, 2010, concerning California America Water's (CAW) Amended Aquifer Storage and Recovery Operating Plan pursuant to State Water Resources Control Board (State Water Board) Order 2009-0060, Condition (3) ASR Project. Condition (3) of the 2009 Order requires that as of June 1 of each year, CAW submit an operating plan to the State Water Board defining the amount of water that is projected to be pumped from the ASR project for delivery to its customers during the months of June through December to maximize recovery benefits to the Carmel Valley Steelhead.

The June 3, 2010, CAW letter notified the State Water Board's Division of Water Rights (Division) that in accordance with Order WR 2009-0060, the ASR Recovery Plan, which is part of the Quarterly Water Budget for Monterey Peninsula Water Management District (MPWMD), had been approved at a quarterly supply strategy meeting. The ASR Recovery Plan for 2010 would provide 1,111 acre-feet of water previously diverted to underground storage back to the CAW system. The recovery regime was to provide the ASR water to CAW customers from June through November of 2010, with 459 acre feet recovered through September.

On September 20, 2010, MPWMD adopted a Quarterly Water Budget that varied from CAW's June ASR Recovery Plan, as submitted to the Division. This updated recovery plan indicates that from June through September 2010, zero (0) acre-feet of ASR water would be pumped and delivered to customers. From October through December 2010, the proposed 1,111 acre-feet of water would still be pumped from the recovery basin and used for your customers. By letter dated September 30, 2010, MPWMD expressed its support for the amended ASR Operation Plan and agrees that CAW will maximize use of its allocation of native Seaside Groundwater, including carry over storage in water year 2010.

The Division notes that CAW's third quarter report for 2010 indicates that 225 acre-feet of water was recovered in June. This suggests that the third quarter report is in error, or the amended aquifer storage and recovery plan is incorrect. Please correct or comment on this apparent error. Please note that Condition C of the order requires that ASR water be supplied to CAW customers only during months when water is most needed in the river to preserve steelhead. Upon receipt of your correction or comments, the Division will determine if CAW is in compliance with Condition (3) of the 2009-0060 Order.

If there are any questions concerning this matter, please contact John O'Hagan of my staff at (916) 341-5368.

Sincerely,

James W. Kassel
for Barbara Evoy
Deputy Director for Water Rights

cc: Robert MacLean, President
California American Water
P.O. Box 951
Monterey, CA. 93940

Darby Fuerst, General Manager
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93940

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
777 Sonoma Ave., Room 325
Santa Rosa, California 95404-4731

October 25, 2010

In response, refer to:
SWR/F/SWR3:JEA

Margaret Paul
Senior Biologist Supervisor
California Department of Fish and Game
20 Lower Ragsdale Drive, Suite 100
Monterey, California 93940

Dear Ms. Paul:

This letter is in regards to our phone conversation on October 14, 2010, discussing the disbursement of California American Water's (CAW) Settlement Agreement funds for the Old Carmel River Dam Removal (OCRD) project.

As you are aware, NOAA, the California Department of Fish and Game (DFG), and CAW reached a settlement agreement in 2009 to address CAW's unpermitted take of listed South-Central California Coast steelhead in the Carmel River. The money from the Settlement Agreement is to fund projects in the Carmel River watershed that addresses water withdrawal impacts to steelhead and their habitat.

During a meeting on January 21, 2010, between DFG and NOAA's National Marine Fisheries Service (NMFS) regarding projects to be funded by the Settlement Agreement, DFG and NMFS agreed the OCRD project should be funded under the Settlement Agreement. This project would remove the OCRD and possibly the OCRD bridge once it is determined the bridge is no longer needed for right-of-way access by neighboring land owners.

The OCRD is also a component of the Carmel River Reroute and Dam Removal Project (CRRDR). The CRRDR EIR/EIS included notching of the OCRD to enhance fish passage past the dam. Subsequent to the aforementioned meeting between DFG and NMFS, the CRRDR project team (State Coastal Conservancy (SCC), NMFS, and CAW) determined it would be more environmentally beneficial to completely remove the OCRD rather than just notch it. The CRRDR project team agreed there would be cost-savings and time-efficiencies to incorporating the design, permitting and possibly construction of the removal of the OCRD (rather than just notching it) into the CRRDR project; however, removal of OCRD is beyond the scope of CAW's commitment in the CRRDR project. Therefore, a plan was outlined to split the design, permitting, and construction costs between the CRRDR and the Settlement Agreement funds.

After this discussion by the project team, Trish Chapman (SCC) and I discussed this with Larry Hampson, Monterey Peninsula Water Management District (MPWMD), who had submitted the application to DFG for funding of the OCRD project. He was in agreement with this funding scenario. We then had a phone conversation with you and Jeff Single (DFG Regional Manager) to discuss the efficiency and cost saving benefits of incorporating the OCRD removal with the CRRDR project. It was my understanding DFG was in agreement with the plan that the CRRDR project would fund the permitting and design of the OCRD project and DFG would use the Settlement Agreement funds to fund the construction phase of removing the OCRD. In this latest phone conversation, I was surprised to hear DFG did not in fact agree to this funding plan. However, after additional discussion, it is my understanding that DFG now supports this plan.

To ensure DFG, NMFS and SCC understand this agreed-to plan, I have outlined below what I believe you and I agreed to in this call.

1. The CRRDR project will undertake the design and permitting for the removal of OCRD and the OCRD Bridge.
2. MPWMD's application for funding the design and permitting of the OCRD will be removed from the list of projects to be funded under the Settlement Agreement.
3. DFG will hold enough money in the Settlement Agreement account to fund the construction phase of the removal of OCRD and bridge. Who the applicant will be for this project is unknown at this time.

In addition to the discussion regarding the OCRD, we also discussed the funding for the Sleepy Hollow Bridge and removal of the Sleepy Hollow Ford. It is my understanding DFG remains committed to funding the design, permitting, and construction of the bridge and removal of the ford through the Settlement Agreement account.

If I have misunderstood DFG's position on either of these projects, please let me know as soon as possible. It is important to NMFS and the CRRDR project team to continue to coordinate with DFG on these important projects so they can move forward in a timely manner.

If you have any questions, please contact me at (707) 575-6064 or joyce.ambrosius@noaa.gov.

Sincerely,

Joyce Ambrosius

Joyce Ambrosius
Central Coast Branch Supervisor
Protected Resources Division

cc: Chris Yates, NMFS, Long Beach
Dick Butler, NMFS, Santa Rosa
Jeff Single, DFG, Fresno
Trish Chapman, SCC, Oakland
Larry Hampson, MPWMD, Monterey
Kevin Shaffer, DFG, Sacramento