



Supplement to 3/21/11 MPWMD Board Packet

Attached are copies of letters received between February 15, 2011 and March 14, 2011. These letters are also listed in the March 21, 2011 Board packet under item 21, Letters Received.

Author	Addressee	Date	Topic
Kate McKenna	Ron Weitzman	2/17/11	Proposed Reorganization Relating to the Formation of a County Water District and the Dissolution of the MPWMD
John Dalessio	Michael R. Peevey	2/23/11	Cal-Am Application No. 10-01-012 - Collect User Fee
David Sweigert	Robert S. Brower, Sr.	2/24/11	Ordinance No. 146 – Tolling Water Credit Expiration Dates
Michael Stamp	MPWMD Board	3/7/11	CEQA Litigation with regard to Regional Water Project
Julie Packard	Michael R. Peevey	3/9/11	Cal-Am Application No. 10-05-020 - Moratorium on New or Expanded Water Service Connections

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LAFCO of Monterey County

LOCAL AGENCY FORMATION COMMISSION
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KATE McKENNA, AICP
Executive Officer

February 17, 2011

Mr. Ron Weitzman
WaterPlus Association
23910 Fairfield Place
Carmel, CA 93923

RECEIVED

FEB 16 2011

MPWMD

RE: Jurisdiction of the Local Agency Formation Commission of Monterey County and the Monterey Peninsula Water Management District, and Proposed Reorganization Relating to the Formation of a County Water District and the Dissolution of the Monterey Peninsula Water Management District

Dear Mr. Weitzman:

This office is in receipt of a draft petition that WaterPlus Association is considering circulating to dissolve the Monterey Peninsula Water Management District (MPWMD) and establish a successor county water district to exercise certain powers within the same boundaries. Among other things, the petition presents a question of whether the Local Agency Formation Commission of Monterey County (LAFCO) has jurisdiction over the dissolution of the MPWMD pursuant to the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Government Code section 56000 et seq. (the CKH Act).

I am writing now to reply to the question of jurisdiction, to outline the application requirements and process should you wish to proceed with the petition, and to offer to meet with you to discuss these matters.

Jurisdiction of LAFCO

At my request, the LAFCO General Counsel has prepared a response to the question of whether the dissolution or other change of organization of the MPWMD is subject to LAFCO's jurisdiction under the CKH Act. The short answer is yes; Counsel is of the opinion that LAFCO has jurisdiction concerning the matter of dissolution of the MPWMD pursuant to the terms of

the District's principal act and the CKH Act. As the response is protected by attorney-client privilege, I will request the Local Agency Formation Commission to consider authorizing release of Counsel's memorandum for public review at the next regular LAFCO meeting on February 28.

Petition Process

If WaterPlus Association wishes to initiate the petition process, the basic steps are as follows: filling of a notice of intention to circulate a petition with LAFCO (Government Code section 56700.4); calculation of the number of registered voters residing in the proposed special district (Government Code section 56375 (f)); disclosure of contributions and expenditures in support of and against the reorganization proposal (Government code sections 56700.1 and 56100.1); circulation of the petition (Government Code section 56700 et seq., Government Code section 56860, Water Code sections 30202 and 30203, and Government Code section 56705); submission of the petition to LAFCO; examination of the petition by the County Elections Official (Sections 9113 to 9115 of the Elections Code), and preparation of a Certificate of Sufficiency by LAFCO (Government Code section 56706(a)). The petitioners must pay for all work of the Elections Office.

Application Requirements

Following issuance of the Certificate of Sufficiency for the petition, an application for reorganization must be submitted to LAFCO. The application must contain the information listed in Government Code section 56652 and specific requirements as determined by the LAFCO Executive Officer and discussed with proponents during a pre-application meeting. The application must include sufficient information for LAFCO to determine (1) whether the proposed district can carry out its purposes, (2) whether it will have sufficient revenues to provide the proposed services, and (3) whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner. In part, the information is intended to address statutory requirements and local policies that discourage the unnecessary creation of new, single-purpose agencies. The information must also address LAFCO's broader legislative purposes to encourage the orderly formation and growth of local government agencies, to preserve open space and agricultural lands, to discourage urban sprawl, and to ensure that local government services are provided in an efficient manner (Government Code section 56000, et seq.).

Some of the items to be discussed at a pre-application meeting will include: a detailed plan for the dissolution of the MPWMD and formation of a successor district; a Tax Sharing Agreement with the County of Monterey, if necessary, as outlined in Revenue and Taxation Code section 99; a Financial Feasibility Study prepared by a consultant to be selected by LAFCO and paid for by the proponents (Government Code section 56652 and LAFCO of Monterey County Standards for the Evaluation of Proposals); an environmental analysis prepared by a consultant to be selected by LAFCO as lead agency and paid for by the proponents (CEQA Act and Guidelines); a deposit and written agreement to pay all actual costs of staff, legal, consultant, and other expenses incurred in processing the application (LAFCO Schedule of Processing and Filing Fees),

and provisions for the applicant to defend at its sole expense any action brought against LAFCO, the Commission and its staff, because of the processing or approval of the application.

Application Process

Following submittal of the reorganization application to LAFCO, staff will review the application for completeness and refer it to affected agencies for comment. After the application is deemed complete, including fiscal and environmental studies, the Executive Officer will prepare a report and recommendations, and schedule a public hearing. Recommendations to the Commission will be based on statutory and policy factors, comments from affected agencies, and an analysis of the proposal. The Commission will conduct a public hearing to consider the application on its merits, including local policies and the requirements of State law such as Government Code sections 56425(e), 56668, and 56886.5(a).

If the Commission denies the application, no further proceedings will be held on the proposal (Government Code sections 56660, 56665, and 56880). State law also provides a process for reconsideration of the Commission's action (Government Code section 56895). If the Commission approves the reorganization, the application will be submitted to the U.S. Department of Justice for pre-clearance pursuant to Section 5 of the Voting Rights Act of 1965, as amended. The Department of Justice will respond within 2 months of receiving that request.

In the best of circumstances, the estimated timeline for this application process is about six months, as measured from when a complete application is submitted to LAFCO. The actual timeline will be affected by any legal challenges, reconsideration requests, preparation of an environmental impact report, or other complications.

Election Process

After the U.S. Department of Justice pre-clears the application, LAFCO would request the Monterey County Board of Supervisors to direct the County Elections Official to conduct the necessary elections to establish the proposed district. The election would be held at the next election occurring not less than 88 days after the date of the order of election (Elections Code section 1405(b)). Elections for membership on the Board of Directors of the proposed County Water District would be conducted at the same election (Government Code section 57139).

The election would be conducted at polling places or by mail ballot. After completing the canvass of ballots, the Elections Official would report the results to the LAFCO Executive Officer. Within 30 days of that notice, LAFCO would execute a Certificate of Completion if a majority of those voting favored the reorganization. LAFCO would also submit the reorganization to the State Board of Equalization. If a majority of votes is cast against the reorganization, the Executive Officer would execute a Certificate of Termination (Government Code sections 57149, 57176, and 57179). If the reorganization is ratified by voters, the new County Water District would pay the costs of the election. If the reorganization is not successful, the costs of the election are paid by the County (Government Code section 57150). If the reorganization is

ratified, the new County Water District also pays processing charges from the State Board of Equalization (State Board of Equalization: "Requirements for Statements, Geographic Descriptions, Maps and Fees"). The effective date of dissolving the MPWMD and establishing the successor district would be determined by terms and conditions of the reorganization.

I invite you to make an appointment with me to discuss these matters in detail.

Sincerely,



Kate McKenna, AICP
Executive Officer

cc: Darby W. Fuerst, Monterey Peninsula Water Management District
Linda Tulett, Monterey County Elections Office
Nick Chiulos, Monterey County Administrative Office

Carmel River Advisory Committee
5 Harris Court, Bldg. G
Post Office Box 85
Monterey, California 93942-0085

February 23, 2011

Via Electronic Transmission:

Administrative Law Judge Maribeth A Bushey
mab@cpuc.ca.gov

President Michael R. Peevey, California Public Utilities Commission
mpl@cpuc.ca.gov

Re: Cal-Am Application No. 10-01-012

Dear Judge Bushey, President Peevey, and Commissioners:

The Carmel River Advisory Committee (CRAC) is a standing official committee formed by the Monterey Peninsula Water Management District (the MPWMD) in 1980 for the purpose of overseeing projects to protect and rehabilitate the Carmel River (the River). We are appointed by members of the MPWMD Board of Directors, and serve as unpaid volunteers. We meet a minimum of four times (eight hours) each year, and spend countless additional time reviewing plans, inspecting the River, and communicating with those persons who are directly impacted by its health.

We oppose the proposed denial of the application of California-American Water Company (Cal-Am) to collect and transfer to the MPWMD a "user fee," which the District has used to protect and rehabilitate the River. The Proposed Order further states: "Accordingly, the associated Monterey Peninsula Water Management District User Fee Memorandum Account should be dissolved and no rate recovery authorized." The Proposed Decision continues: "if the Management District ceases to perform these mitigation measures, then Cal-Am must prepare and implement a plan to meet this responsibility." It should be noted that the program of mitigation measures enacted in 1990 by MPWMD for Carmel River diversions pre-dates the 1995 State Water Resources Control Board order that makes Cal-Am responsible if MPWMD finds cause to cease these measures.

Under the Proposed Decision, the District will lack the resources, and therefore almost certainly will have to suspend and/or terminate its ongoing Carmel River steelhead mitigation and monitoring programs and other programs that help restore and protect the streamside corridor. We recognize that leaving these tasks to Cal-Am might be convenient for administrative law purposes, but, we submit that the Proposed Decision makes no practical sense. Cal-Am has no experience in monitoring and administrating

The Carmel River Advisory Committee has been a standing Committee of the Monterey Peninsula Water Management District since 1980 and is charged with providing recommendations to the District Board of Directors with regard to management of the Carmel River and its riparian corridor.

such programs, and has demonstrated neither commitment to the health and well being of the River nor to the survival of the flora and fauna that rely upon the River for sustenance.

Rather, Cal-Am primarily is responsible for the degradation of the River, through its long term illegal diversion of water from the river. Further, since 1997, when the South Central California Coast Steelhead Distinct Population Segment (SCCCS) was determined to be a threatened species, Cal-Am has continued to illegally pump in excess of 7,000 acre feet of water from the River, resulting in substantial "take" of steelhead habitat in the River as well as other direct impacts to steelhead in the stream.

While we agree that Cal-Am shares responsibility with MPWMD for protecting the steelhead in the River, the present mitigation program run by the MPWMD is working, and needs to be continued. Even a temporary suspension of the program, which could be a result of the Proposed Decision, could be disastrous to the steelhead, and to other life dependent upon the River.

Moreover, in its role of trustee, the MPWMD has a separate and distinct responsibility for the health of the River, and especially for any threatened species that live in it. It has been able to meet this responsibility through the use of the "user fee," which the Proposed Decision would eliminate. We submit that common sense, as well as applicable law, strongly suggests that the Proposed Order be revised to enable the MPWMD's successful mitigation and protection program to continue to help to protect and preserve the River, and the steelhead.

Respectfully submitted,

John Dalessio
Chairman
Carmel River Advisory Committee

Cc: Carmel River Advisory Committee Members
Lance Monosoff, Vice Chair
Vincent Frumkin
Thomas D. House, Jr.
Lawrence V. Levine
Clive Sanders
Marjorie Ingram-Viales
Darby Fuerst, MPWMD General Manager

The Carmel River Advisory Committee has been a standing Committee of the Monterey Peninsula Water Management District since 1980 and is charged with providing recommendations to the District Board of Directors with regard to management of the Carmel River and its riparian corridor.

MARK A. CAMERON
 JOHN S. BRIDGES
 DENNIS G. MCCARTHY
 JACQUELINE P. MCMANUS
 CHRISTOPHER E. PANETTA
 DAVID C. SWEIGERT
 SARA B. BOYNS
 BRIAN D. CALL
 SHARILYN R. PAYNE
 BRIAN E. TURLINGTON
 CAROL S. HILBURN
 TROY A. KINGSHAVEN
 MICHAEL P. BURNS
 KATHERINE M. HOGAN

FENTON & KELLER

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ATTORNEYS AT LAW

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FEB 24 2011

February 24, 2011

MPWMD

DAVID C. SWEIGERT

DSweigert@FentonKeller.com
 ext. 202

VIA E-MAIL (rbower@chateaujulien.com)

Robert Brower, Board Chair
 Monterey Peninsula Water Management District
 5 Harris Court, Bldg G
 Monterey, CA 93940

Re: Ordinance No. 146
Our file: 32436.29385

Dear Chair Brower and Members of the Board:

I am writing regarding Item 16 on the District Board's agenda today regarding preparation of a mitigated negative declaration for Ordinance No. 146. Our firm represents a number of clients holding water credits issued by the District. We encourage the Board to proceed with the ordinance based on a mitigated negative declaration and on the alternative ground that the ordinance is subject to a Class 1 categorical exemption based on existing facilities pursuant to CEQA Guidelines section 15301.

Ordinance No. 146, if adopted, would do nothing more than preserve the status quo with respect to existing and future water credits issued by the District. District water credits represent past permitted water uses on existing developed properties. The tolling proposed by Ordinance No. 146 would simply extend the ability of property owners who now hold water credits or who may obtain water credits in the future to reinstitute lawful water use in the event that any moratorium may be interpreted to prohibit the use of water credits.

Today's current water use alone cannot be considered the environmental "baseline" for purposes of evaluating whether a Class 1 categorical exemption applies or whether Ordinance No. 146 will result in environmental changes. The District should apply a baseline that includes today's current water use **plus** the water use permissible under the existing water credits issued by the District. This is the appropriate baseline for two reasons. First, anyone with a valid water credit as of today could reinstitute that use and such use would be essentially a ministerial action beyond the purview of CEQA. Second, to apply a baseline of current water use alone would be to write off property owners who have previously obtained water credits from the District and

Robert Brower, Board Chair
 February 24, 2011
 Page Two

would result in unfair, unreasonable, and disparate treatment of them as compared to those that may apply for and receive water credits from the District in the future. Under that scenario, the use of future water credits would be treated as not contributing to a change in the baseline, while use of past water credits would be treated as a change in the baseline and thus contributing to potential significant environmental impacts.

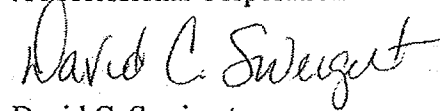
CEQA does not compel this kind of discrimination and unequal protection of similarly situated property owners. To the contrary, CEQA allows a public agency to apply an environmental baseline other than current environmental conditions where a reasonable basis exists for doing so. (See CEQA Guidelines § 15125 (existing physical conditions at the time environmental review is commenced "will normally constitute the baseline physical conditions" to be applied by lead agency).) It is appropriate and reasonable to apply a different baseline here for purposes of determining whether a Class 1 categorical exemption applies or whether a change in physical conditions will result from the adoption of Ordinance No. 146.

Ordinance No. 146 would merely extend the District's ability to honor the important commitments it has made to property owners that they will be allowed to reinstitute water use on the site for which the credit was issued. CEQA should not be allowed to be used by some as a tool to prevent the District from honoring those commitments or preventing lawful water use commensurate with past use on existing developed properties.

We encourage the Board to authorize staff to move forward on the proposed ordinance as expeditiously as possible.

Very truly yours,

FENTON & KELLER
 A Professional Corporation



David C. Sweigert
by TOB.

DCS:tob

cc: Alvin Edwards (c/o MPWMD via e-mail: Darby@mpwmd.dst.ca.us)
 Judi Lehman (c/o MPWMD via e-mail: Darby@mpwmd.dst.ca.us)
 Kristi Markey (via e-mail: kmarkey65@comcast.net)
 Regina Doyle (c/o MPWMD via e-mail: Darby@mpwmd.dst.ca.us)
 David Pendergrass (via e-mail: SandCityMyr@aol.com)
 David Potter (via e-mail: district5@co.monterey.ca.us)
 Darby Fuerst, General Manager (via e-mail: Darby@mpwmd.dst.ca.us)
 David Laredo, District Counsel (via e-mail: dave@laredolaw.net)
 Mahroom Family Partnership

LAW OFFICES OF
MICHAEL W. STAMP

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Monterey, California 93940

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March 7, 2011

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Re: CEQA Litigation with regard to Regional Water Project

To all agencies on the attached Service List:

MPWMD

Please take notice that on February 14, 2011, the following lawsuit was filed in the Superior Court of California, County of Monterey:

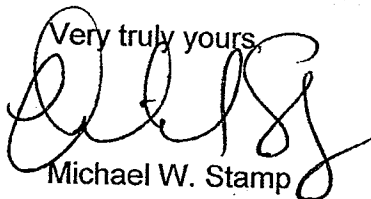
- Ag Land Trust (Petitioner) filed a petition under the California Environmental Quality Act against the Monterey County Water Resources Agency (Respondents), Superior Court case number M110691.

The petition challenges Respondents' compliance with CEQA in regard to the approval of the Regional Water Project.

On March 1, 2011, Respondents provided Petitioner Ag Land Trust with a document described as "Notice of Responsible Agencies and Agencies with Jurisdiction."

On behalf of Petitioner Ag Land Trust, a copy of this notice is being sent to the agencies on Respondents' list. (See Pub. Resources Code, § 21167.6.5, subd. (c).)

Very truly yours,



Michael W. Stamp

See attached Service List

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

Transportation Agency for
Monterey County
55-B Plaza Circle
Salinas, CA 93901

Monterey Regional Water
Pollution Control Agency
5 Harris Court, Building D
Monterey, CA 93940

Monterey County Water
Resources Agency
893 Blanco Circle
Salinas, CA 93901-4455

Monterey Regional
Waste Management District
P.O. Box 1670
Marina, CA 93933-1670

Monterey Bay Unified Air
Pollution Control District
24580 Silver Cloud Court
Monterey, CA 93940

Seaside Groundwater Basin
Watermaster
2600 Garden Road, Suite #228
Monterey, CA 93940

City of Marina
211 Hillcrest Avenue
Marina, CA 93933

City of Seaside
440 Harcourt Avenue
Seaside, CA 93955-4798

City of Sand City
City Hall
1 Sylvan Park
Sand City, CA 93955

City of Del Rey Oaks
City Hall
650 Canyon Del Rey Road
Del Rey Oaks, CA 93940

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

Transportation Agency for
Monterey County
55-B Plaza Circle
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Monterey Regional Water
Pollution Control Agency
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Monterey County Water
Resources Agency
893 Blanco Circle
Salinas, CA 93901-4455

Monterey Regional
Waste Management District
P.O. Box 1670
Marina, CA 93933-1670

Monterey Bay Unified Air
Pollution Control District
24580 Silver Cloud Court
Monterey, CA 93940

Seaside Groundwater Basin
Watermaster
2600 Garden Road, Suite #228
Monterey, CA 93940

City of Marina
211 Hillcrest Avenue
Marina, CA 93933

City of Seaside
440 Harcourt Avenue
Seaside, CA 93955-4798

City of Sand City
City Hall
1 Sylvan Park
Sand City, CA 93955

City of Del Rey Oaks
City Hall
650 Canyon Del Rey Road
Del Rey Oaks, CA 93940



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MAR 14 2011

MPWMD

March 9, 2010

VIA FACSIMILE (415.703.1758) AND ELECTRONIC MAIL
(public.advisor@cpuc.ca.gov)

California Public Utilities Commission
Michael R. Peevey, President
505 Van Ness Avenue
San Francisco, CA 94102

Re: Proposed Decision- In the Matter of the Application of California-American Water Company (U210W) for an Order Authorizing and Imposing a Moratorium on Certain New or Expanded Water Service Connections in its Monterey District (A10-05-020) March 10, 2011 CPUC Meeting, Agenda Item No. 47

Dear Mr. Peevey and Members of the Commission:

I am writing on behalf of the Monterey Bay Aquarium Foundation ("Foundation") to comment on item 47 on the agenda for your March 10, 2011 meeting. Under that item, the California Public Utilities Commission ("Commission") will consider a proposed decision of Administrative Law Judge Weatherford ("Proposed Decision") to adopt a moratorium on new connections and increased water use in the service area of California- America Water Company ("Cal-Am"). The proposed moratorium would allow Cal-Am to decline service to certain customers so as to implement the Cease and Desist Order ("CDO") issued by the State Water Resources Control Board ("SWRCB") in October of 2009.

Since 1984, the Foundation has operated the Monterey Bay Aquarium on Cannery Row in Monterey ("Aquarium"). The Aquarium is key to the Foundation's mission of inspiring ocean conservation and is central to the Foundation's public education and outreach activities promoting ocean conservation.

Consistent with its conservation mission and its role as a leader in innovative and environmentally friendly technologies, a desalination facility was installed at the Aquarium in the mid-1990's. Beginning in 1996, the Aquarium converted its restrooms and hose-bibs to desalinated water. This resulted in the permanent substitution of desalinated water for a portion of the Aquarium's potable water supply from Cal-Am. Consistent with its applicable rules and regulations, the Monterey Peninsula Water Management District ("MPWMD") issued a Water



MONTEREY BAY AQUARIUM

Use Credit to the Foundation which allows future use of a portion of the water conserved by the Aquarium's desalination facility. The ability to acquire and use the Water Use Credit in the future was a major incentive in the Foundation's decision to fund and install the Aquarium's desalination facility.

The Foundation is currently considering implementing changes and improvements at the Aquarium that would utilize a portion of the Foundation's Water Use Credit. These changes and improvements are important to the Foundation's mission and to the continuing growth and fiscal health of the Aquarium.

We understand there may be some confusion among regulatory agencies, including MPWMD, SWRCB, and the Commission, as to whether the CDO (and thus the proposed moratorium) would prevent the Foundation from using its Water Use Credits for its proposed improvements and development at the Aquarium. Our reading of the CDO suggests it would not prevent the use of the Foundation's Water Use Credits. Any moratorium approved by the Commission should expressly clarify that the use of the Foundation's Water Use Credits for proposed improvements at the Aquarium would not be prohibited.

Paragraph 2 on page 57 of the SWRCB's CDO states:

Cal-Am shall not divert water from the Carmel River for new service connections or for any increased use of water at existing service addresses resulting from a change in zoning or use. Cal-Am may supply water from the river for new service connections or for any increased use at existing service addresses resulting from a change in zoning or use after October 20, 2009, provided that any such service had obtained all necessary written approvals required for project construction and connection to Cal-Am's water system prior to that date.

Future use of the Foundation's Water Use Credits at the Aquarium should not be deemed to involve an "increased use of water" at the Aquarium for purposes of the CDO and moratorium. In actuality, the Aquarium's Water Use Credits represent a temporary suspension of use of Cal-Am water at the Aquarium and use of the Water Use Credit in the future would simply restore a portion (but not all) of the Aquarium's past lawful use of Cal-Am water at the Aquarium.

The Aquarium's Water Use Credit is similar to other water entitlements reasonably protected under the CDO and the Proposed Decision, including the Carmel Area Wastewater District water entitlements. Similar to the Foundation's Water Use Credits resulting from the Aquarium's desalination facility, those entitlements were based on potable Cal-Am water that was made available through the implementation of innovative water conservation measures. The CDO and Proposed Decision expressly provide protection for those Carmel Area Wastewater



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District water entitlements. The Foundation's Water Use Credits should be entitled to the same protection.

The Foundation reasonably relied on MPWMD's Rules and Regulations and its ability to use Water Use Credits in the future when it decided to finance and install the desalination facility at the Aquarium. A moratorium that prevents the Foundation from utilizing its Water Use Credits for proposed improvements to the Aquarium would create a significant hardship for the Foundation and would prevent achievement of the goals for the Aquarium's future. For these reasons, we respectfully request that the Commission expressly exclude the Foundation's Water Use Credits from the scope of any moratorium the Commission may approve.

We appreciate the opportunity to comment on this important matter.

Sincerely,

A handwritten signature in cursive script that reads "Julie Packard".

Julie Packard, Vice Chairman, Board of Trustees

cc: Vicky Whitney, Deputy Director, SWRCB (Division of Water Rights)
Darby Fuerst, General Manager, MPWMD
Craig Anthony, General Manager, Cal-Am
Chuck Della Sala, Mayor, City of Monterey