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Monterey  
CA 93940

August 1, 2012

Dave Potter, Chairman, and  
Members of the Board of Directors  
Monterey County Water Management District  
5 Harris Court, Bldg. G  
Monterey, CA 93940

**APPEAL TO MPWMD BOARD OF DIRECTORS**

**OF PERMIT APPROVALS DATED JULY 12, 2012**

**S12-03-L2 ("FLORES" WDS) AND S12-04-L2 ("PISENTI" WDS)**

Chair Potter and Members of the Board of Directors:

We respectfully submit the following appeal in accordance with MPWMD Rule 70. This follows a Director's Appeal heard at your November 21, 2011 meeting, and is in conjunction with a further Director's Appeal that has already been lodged.

We enclose a check for the fee of \$750, although in light of the "issues of public interest" provision of Rule 70, we wish to request a waiver. It appears from Rule 70 that this may be granted immediately by the General Manager, or failing that, by the Board if it "finds that the appeal has provided a significant benefit to the public".

As part of our constructive approach, we have from the beginning discussed with staff our suggestions for needed improvements in the "MPWMD Procedures for Preparation of Well Source and Impact Assessments" (hereafter "Procedures") [EXHIBIT A], especially in regard to notification of neighbors, and avoidance of unscientific estimates. More recently, we have attended meetings of your Rules and Regulations Committee, and contributed ideas, based on our first-hand experience, that they have adopted. We watch their agendas for any other topics on which we may be able to help. We believe that your staff and committee activity in improving the Procedures is strong evidence that these are issues of public interest.

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**MPWMD**

We have also acted very quickly where possible to deal with problems that we did not cause - see, e.g. "Extraordinary efforts by the Beeches" in our original appeal [EXHIBIT B]. We installed a sounding tube and were ready for retesting in October, 2011. We had reached an agreement with Mr. Bierman representing the Applicants, but at the last moment, the Applicants refused to sign any agreement. Now in the next dry season, we are again ready for monitoring if the Board orders the retesting.

Moreover, our objection is not to the development of single-family homes on the Flores-Pisenti parcels, but to the lack of assurance that in the short term or the longer term, the total dependency of such homes (including guest cottage and pool) on Well#1 and Well#2 as their water source will not deprive us of the water rights provided by our long-established well. Strict application of the MPWMD Procedures is intended to provide as fair a prognosis as possible. Monitoring of our well would help to address the short-term concern, and proper factual recovery testing would help to address the longer-term concern.

### **Background**

We have a well that is registered with MPWMD. In mid-to-late October, 2010, our well pump ran dry. We discovered this when we noticed that our irrigation system was inoperative, due to our storage tanks being empty. We then found that the safety switch on our pump was off, and reset it. The pump ran for a short time before the switch went off again. This was repeated several times for approximately three days, until eventually the pump ran without interruption, refilling the storage tanks, and continuing to function correctly ever since.

In the 11 years in which we have owned and resided at this property, we have never encountered a similar problem with the well (which had been installed by the previous owners about 10 years before we came). It was only after this problem arose that we learned from a neighbor of the existence of the new Flores/Pisenti Well #2, and of the testing that had just been taking place of Wells #1 and #2. We had received no notification of the well construction or its testing. We had not received any offer to monitor our well simultaneously with the testing for potential impact as required by MPWMD Procedures. We would certainly have agreed to this, as the new well is almost directly up the slope behind us, and its impact is best determined by hard data.

We made no change to our water use patterns around that time, so that the strong correlation of the timing and duration of this unique problem - the running dry of our well for about three days - with the simultaneous pumping of both the Flores/Pisenti Well #1 and Well #2 for three days, suggests that their relationship needs to be convincingly investigated.

Such an investigation has still not been carried out, despite our best efforts as detailed in the section **Time Line** below. However, the Board has the power to decide that retesting

is necessary before the end of this dry season, for example in October 2012, and this would hopefully come close to replicating the conditions when the unexplained problem arose in October 2010.

The decision on these issues of testing wells in fractured rock is important both directly for Flores/Pisenti Well #1 and Well#2 (e.g. the District has no record of having previously approved any well with recovery as poor as Well #2), and also for wider implications as setting a precedent (e.g. an adjoining 20-acre parcel across Monhollan Road from Flores/Pisenti has recently been offered for sale). In another part of Monterey County, the Granite Ridge experience underlines the need for extreme care in evaluating multiple new wells in fractured rock areas.

### **Summary of Grounds for Appeal (same for both Flores and Pisenti WDS)**

We wish to place before you at this point a summary of the grounds for appeal, and discuss our requested relief. The details of the grounds for appeal and other aspects of past history will then be provided further below, or by reference to other Exhibits, for you to consider as deeply as necessary.

#### **Failure to monitor impact on neighboring wells**

It is uncontested that the Applicants failed to notify owners of wells within 1000' as required by MPWMD Procedures, even though MPWMD had sent the Applicants a map [EXHIBIT C] showing such wells, including the Beech well. This non-compliance has never been resolved, and any claim that it does not need to be resolved is vitiated by the denial of due process in the handling of our original appeal (see below).

#### **Failure to comply with Documentation of Drawdown and Recovery**

The mandated measurement was not continued until 95% recovery was achieved as required by the Procedures. Additionally, the unjustified and undocumented estimating techniques then invoked are so permissive that Well #2 would have passed even if its 6-day recovery had been 2% instead of 95%. If retesting is performed, it would be consistent with the Procedures for the Board to disallow use of this grossly erroneous technique, since Step 2 does not specify how an "evaluation" is performed by the District.

#### **Denial of Due Process**

In attempting to resolve the above problems in June 2011, we received a letter [EXHIBIT D] from General Manager (at that time) Darby Fuerst requiring us to make decisions within 7 and 14 days, despite it being known that we had serious health issues, and were about to travel abroad for events planned twelve months previously. Nevertheless, we filed an immediate appeal addressed to the Board, and delivered it to MPWMD offices. Further denials of due process (including but not limited to, failure to deliver the appeal to the Board as the addressees, self-contradiction by the District in

reversing their position on appealability, and denial of the validity of the appeal which was not their call since it was an appeal to the Board against their actions) prevented the appeal from reaching you, and it was only a Director's Appeal that finally brought the issues before you at your September 19, 2011 and November 21, 2011 meetings.

### **Unsupported Findings**

As a result of the above shortcomings, the following Findings [EXHIBIT E] lack valid support.

FINDING 6: The application ... is in accordance with District Rules 21 and 22.

FINDING 9: Four Wells are located within 1,000 feet of the subject Well, and would not be adversely affected.

FINDING 11: The application demonstrates existence of a long-term reliable source of water supply... .

FINDING 12: The cumulative effects of issuance of a Permit for the subject property would not be expected to result in significant adverse impacts to the source of supply ... .

### **Relief Requested**

1. Flores/Pisenti Well #1 and Well #2 shall be retested pursuant to MPWMD Procedures.

[Discussion: Since "retest" is not defined in the Procedures, it can only be given its normal meaning of "test again", i.e. carry out a well test according to the Procedures rather than some ad hoc partial test.]

2. Well #1 and Well #2 shall be tested simultaneously, with concurrent monitoring of the Beech well.

[Discussion: Although testing is not usually simultaneous, MPWMD granted the Applicants' request for it for their convenience in October, 2010. Retesting should replicate this to check directly the cumulative effect on the Beech well as a possible cause of its running dry. This also avoids doubling the number of days that the Beech well would have to be turned off for monitoring late in the dry season.]

3. 95% recovery within 6 days shall be demonstrated by actual measurements for Well#1 and Well#2 at the pumping rates chosen for the tests, with no use of estimates.

[Discussion: The estimating technique that has been accepted by MPWMD is completely unscientific and worthless. Since retesting is needed, the pumping rates can be chosen to obtain hard facts instead.]

4. Well capacity shall be determined by the actual pumping rates chosen for tests, with no use of estimates.

[Discussion: Since retesting is needed, the pumping rates can be chosen to obtain hard facts instead.]

### **Time Line**

Mid-late October 2010: our well ran dry as described in **Background** above.

Late May, 2011: we finally received the Bierman reports [**EXHIBITS F & G**] that we had requested, even though they were delivered to MPWMD datestamped late March 2011.

June 12 2011: we wrote to MPWMD, with three requests:

that retesting be carried out in October 2011 to replicate as closely as possible the situation of the October 2010 test;

that the recovery requirements of Setting #2, Step 2 (p.11) of MPWMD Procedures be satisfied precisely for both Well #1 and Well #2;

that the estimated reduced pumping rates from the 2010 tests should be used as actual pumping rates for the retesting.

June 24, 2011 : The MPWMD letter of [**EXHIBIT D**] denied all three of our requests, besides setting a very aggressive schedule for us to make a major decision in the absence of vital information requested from the District.

July 5, 2011: GM Fuerst confirmed that his June 24 letter was appealable.

July 11, 2011: Urgent Beech appeal (necessitating much work and legal assistance) is addressed to Chairman Brower and Board, and is received and datestamped by MPWMD, but is not forwarded to addressees

July 20, 2011: GM Fuerst issues "complete" letters to Flores and Piseni applicants, despite the pending Beech appeal

July 26, 2011: GM Fuerst reverses his July 5 assurance, says June 24 letter is not appealable, and hence rejects Beech appeal as invalid

September 19, 2011: Board votes 7-0 on referral of Director Markey's appeal

November 21, 2011: Board votes 4-2 to continue processing applications as "complete", after confirming that permit approval would then be appealable. Several Directors spoke in favor of the retesting we had requested.

### **Detailed Grounds for Appeal**

#### **Failure to monitor impact on neighboring wells**

We were not given the required notification, and our request for retesting with monitoring was improperly rejected. Further discussion may be found in our original appeal **[EXHIBIT B]**.

The Procedures state (bottom p.1): "The following sections outline the minimum requirements for production testing, analysis and reporting of groundwater information to comply with the MPWMD rules and regulations". Specifically, this non-compliance with the Procedures ("Implementation Guidelines" in the Rules) appears to violate Rules 21-A-9 and 22-5.

#### **Failure to comply with Documentation of Drawdown and Recovery**

The non-compliance is with Procedures (p.11, Setting #2, Step 2) . Further discussion may be found in our original appeal **[EXHIBIT B]**.

The Procedures state (bottom p.1): "The following sections outline the minimum requirements for production testing, analysis and reporting of groundwater information to comply with the MPWMD rules and regulations". Specifically, this non-compliance with the Procedures ("Implementation Guidelines" in the Rules) appears to violate Rules 21-A-7 and 22-5.

The calculation showing that 2% recovery would still have allowed Flores/Pisenti Well #2 to pass is as follows:

Using the approach in the Bierman Report (**[EXHIBIT G, p. 18.]**, if we replace the 54.42% recovery used there with 2% recovery:

- % Reduction in Pumping Rate = 93% (95% - 2%)
- Flow Rate Reduction = 38.38 gpm (93% of 41.27 gpm)
- Post-Recovery Pumping Rate = 2.89 gpm (41.27 gpm - 38.38 gpm)

Using Bierman argument, 2.89 gpm "is greater than the MPWMD calculated maximum day demand of 2.66 gpm ... and therefore meets the requirements for a single-connection WDS permit."


### **Denial of Due Process**


The deadlines set in the letter of June 24, 2011 from Darby Fuerst [EXHIBIT D] appear to violate Rule 71 which allows 21 days for appeal of the General Manager's determinations. (We had obtained written confirmation from MPWMD that this was an appealable decision.)

There is no MPWMD rule or procedure that imposes the 7-day and 14-day deadlines imposed on the Beeches by the above letter. There are no adopted MPWMD rules as to any time deadlines for notice to well-owners within 1000 feet when an applicant wishes to test a well.

### **Conclusion**

For all the above reasons, and in the interests of the reputation of MPWMD for impartial, science-based evaluation of new water supplies, especially in fractured rock areas, we ask that our requested relief be granted.

  
Judy Beech

  
David Beech

**EXHIBIT A:** MPWMD Procedures for Preparation of Well Source and Impact Assessments

**EXHIBIT B:** Beech appeal, July 11, 2011

**EXHIBIT C:** Map of wells within 1000' (Pisenti) [Flores similar]

**EXHIBIT D:** Letter of June 24, 2011 from Darby Fuerst to Judy and David Beech

**EXHIBIT E:** Findings of Approval for Flores and Pisenti applications, July 12, 2012

**EXHIBIT F:** Bierman Report on Flores Well Test, March 2011.

**EXHIBIT G:** Bierman Report on Pisenti Well Test, March 2011.