Arlene Tavani

From: Dave Stoldt
Sent: Monday, November 19, 2012 11:34 AM
To: Henrietta Stern; Arlene Tavani
Subject: FW: Sierra Club opposition to water permit for September Ranch
Attachments: Comment Letter Part 1.pdf

From: Rita Dalessio [mailto:puffin46@gmail.com]
Sent: Monday, November 19, 2012 11:32 AM
To: district5@co.monterey.ca.us
Cc: Dave Stoldt; Rita Dalessio; Larry Silver
Subject: Sierra Club opposition to water permit for September Ranch

Dear Chairman Dave Potter and members of the Board of Directors,

RE: Consider Application to Create September Ranch Water Distribution System; September Ranch Partners LLC, Applicant; MPWMD Application #20110316SEP; APN 015-071-010 and -012; 015-361-013 and -014; Carmel Valley

The Sierra Club Ventana Chapter has been following proposed development of the property known as September Ranch for over 13 years. In the matter on the Agenda tonight listed as item 8, we respectfully request that you deny the water distribution system permit for September Ranch. It is our view that the Draft Recirculated EIR (DREIR) from 2009 did not disclose or use accurate water use figures for comparable lots in comparable subdivisions because accurate numbers would show that the estimated water demand is too high. A serious omission is the DREIR's failure to use the MPWMD water permit figures. The more accurate water demand numbers would show that the Septembers Ranch's potential water use and therefore its water impacts are higher than estimated.

Attached is Part 1 of 3 files containing a single correspondence sent by our attorney Michael Stamp to the County regarding the lack of available water for this project and other CEQA issues. I will next send Parts 2 and 3.

Thank you for consideration of our request.

Sincerely,
Rita Dalessio
Conservation Chair

LAW OFFICES OF
MICHAEL W. STAMP

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September 28, 2009

Laura Lawrence
Planning Services Manager
County of Monterey
168 W. Alisal Street, 2d Floor
Salinas, CA 93901

Subject: Sierra Club Comments on the September Ranch Project Revised Water Demand Analysis, a recirculated portion of the 2006 September Ranch Revised Environmental Impact Report

Dear Ms. Lawrence:

Thank you for the opportunity to comment on the September Ranch Project Revised Water Demand Analysis, a draft recirculated portion of the 2006 September Ranch Revised Environmental Impact Report (DREIR). This Office represents the Sierra Club, Ventana Chapter, which has actively participated in the public review of this project for many years.

Sadly, this version of the draft DREIR appears to repeat many of the past errors of past EIR attempts to analyze water impacts of this project, and is characterized by the same omissions of the earlier documents. The DREIR makes a superficial attempt to address the Court's directions, but fails to do with integrity or reliability. Further, the DREIR ignores critical issues and critical new information from the State Water Resources Control Board that requires recirculation.

The EIR reveals its intentions in the following statements (p. 9):

> The goal in estimating demand for purposes of CEQA is to identify a reasonably foreseeable estimate based on facts, inferences, and expert opinion. Because perfect factual information is not available, decision-makers must exercise their discretion and judgment based on substantial evidence in the record. Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

These statements are inconsistent with what an EIR is required to do, as repeatedly held by the Supreme Court and the Courts of Appeal of the State of California. These statements show the County's lack of commitment to doing a good faith, full-disclosure investigation into the water impacts of the September Ranch project. The statements are an insult to CEQA. They also insult the public that has worked for ten years to

enforce CEQA due to the County's repeated failures on this project, and the Courts who have consistently upheld those assertions.

An EIR is to inform the decision makers. To fulfill that goal, in drafting an EIR, "an agency must use its best efforts to find out and disclose all that it reasonably can." (Guidelines, § 15144.) CEQA's informational purposes are not satisfied by an EIR that simply suggests sufficient evidence that "a reasonable mind might accept as adequate to support a conclusion." That lukewarm approach would thwart the twin goals of CEQA. EIRs must include relevant information to allow "informed decisionmaking and informed public participation" to avoid "thwarting the statutory goal of the EIR process." (*Save Our Peninsula Committee v. Monterey County* (2001) 87 Cal.App.4th 99, 118.)

As demonstrated by this recirculated draft EIR, the County and the EIR preparer act as if the purpose of this EIR on remand is nothing more than to suggest the minimum amount of facts that a reasonable mind might accept as adequate to support a conclusion to support the September Ranch project. This is a subdivision project which the County and EIR preparer have been trying to get approved for years, including, by their own admission, countless unpaid hours "behind the scenes" by senior County planning staff Alana Knaster and others. The County and EIR preparer have consistently failed to acknowledge that their repeated failures to produce a competent analysis are because the County has failed to use its best efforts to find out and disclose all that it reasonably can. This DREIR continues the pattern.

On the whole, the draft recirculated EIR does not disclose or use accurate water use figures for comparable lots in comparable subdivisions, because accurate numbers would show that the September Ranch's estimated water demand is too high. A serious omission is the DREIR's failure to use MPWMD water permit figures. The more accurate water demand numbers would show that the September Ranch's potential water use – and therefore its water impacts – are higher than estimated, and would require the Board to place stronger, stricter, more enforceable mitigations and conditions on the County's approvals, in order to comply with CEQA. The DREIR misleads the public and decision makers into thinking that the proposed September Ranch water use is easily achievable, which is an inaccurate perception.

As to the purported water "cap," the County has deliberately abdicated any affirmative duty in enforcing the water demand estimated in the County EIR documents. This is a significant change. Instead, the County is attempting to place all responsibility for enforcing the water demand – as estimated in the County's EIR documents – onto the Monterey Peninsula Water Management District (MPWMD).

We address many of the problems of the draft recirculated EIR in this letter in detail, in order to identify much of the missing information omitted from the DREIR. The comments are generally in the order in which they appear in the draft document.

CALCULATION OF WATER DEMAND

Throughout its analysis the EIR relies on a fatally flawed hypothetical. That, in turn, renders the analysis and the EIR useless as an informational document. The EIR claims that the average September Ranch market-rate lot will have only 4275 square feet of landscaping. (See, e.g., p. 7, 12, and many others.) That claim is incorrect, and misinforms the entire EIR analysis.

Condition #20 does not limit the clearing of native trees and vegetation to 0.33 acres, as the EIR claims (p. 12). Condition 20 merely suggests that "With respect to trees and vegetation removal, the target disturbance goal is to limit disturbance to an average of 0.33 acres per lot." First, there is no "limit," as the EIR claims, there is merely a "target" with no penalty for exceeding that target, and no accountability for doing so. Second, the plan for that development is to be approved solely by a member of the planning staff, with no public review. The staff's actions would be discretionary, which eliminates third party review including any meaningful review by a court. Third, there are no performance standards for the staff to apply, even if the staff wanted to meet the "target disturbance goal." Fourth, the proposed condition applies only to the building envelope, not the larger development envelope, which includes the driveway and other development. Those areas – driveway, etc. – are frequently and typically landscaped, especially in high-end developments like September Ranch. Many of the proposed driveways are long, as can be seen on the project maps. The water use analysis ignores the water demand for those areas.

There is no binding limit to the area to be devoted to the house, garage, and other non-landscaped areas. The estimate of a single architect used by the EIR is not binding on the applicant or on individual property owners. The actual amount may be less, and the area devoted to landscaping may be proportionately larger.

There is no support cited for the claim that the average development envelope is 0.59 acres, so the public cannot review the claim.

The MPWMD does not require landscaping details on the water permits it issues. Landscaping can easily be changed. Exterior water use is a significant factor. For these reasons, the DREIR should impose a mitigation that ensures there would be no change in landscaping without appropriate public review. The DREIR also should impose a mitigation that prohibits any increase in planted area after landscaping permit issued by MPWMD and County.

For all of these reasons, the EIR's statement that the landscaped area could average "as high as 4275 square feet" is wrong, and probably lower than it would actually be.

What is the exact wording of the proposed conservation/scenic easement? The public cannot review the claimed effectiveness for the easement without knowing what is proposed, or at least what performance standards would be required of the easement. This information should be provided and the DREIR recirculated. Does that easement prohibit water use within the easement? If not, the EIR should consider such a mitigation. If not, the EIR has failed to investigate and evaluate the water use in that area.

The EIR preparer still does not understand how water is regulated within the County. The DREIR's broad claim that "In newer subdivisions in Monterey County . . . the extent and type of landscaping, and the number and type of interior fixtures, must be approved by a local water management district (MPWMD) prior to home construction" (p. 8) is incorrect.

The MPWMD only reviews a subdivision within the MPWMD boundaries if the subdivision triggers a permit under MPWMD rules. The MPWMD does not review the subdivision per se, but the proposed new water use.

The County has reviewed and is reviewing many other subdivisions, including ones worked on by this EIR preparer, Michael Brandman & Associates, which are not within the MPWMD boundaries. Those subdivisions are not subject to any local water management district. Where a local water agency exists it does not manage the resource, it merely distributes it, and does not monitor landscaping or interior fixtures. Brandman & Associates should know this through its EIR preparation for the Heritage Oaks subdivision, where the Aromas Water District did not propose any restrictions on water use, landscaping, or interior fixtures. In some areas, there is no local public water agency at all, even acting solely for distribution purposes, and the County is the sole public agency that reviews development.

The County has never before reviewed the extent and type of landscaping or the number and type of interior fixtures for a subdivision. That DREIR claim is incorrect. For subdivisions within the MPWMD, the County does not require any such information. It merely accepts the information submitted by the applicant to the MPWMD. (Any accountability of the subdivisions is solely due to MPWMD in its role as permitting agency for the subdivision's water distribution permit.)

For subdivisions outside the MPWMD, the County at best places broad conditions on landscaping and broad requirements for unspecified water fixtures. Those conditions are easily complied with the slightest bit of effort by the applicant, do not require commitments to specific water use or maximum water demand, and are not followed up on by the County. The conditions, at best, require only specified landscaping at time of development, and do not control future conversion to water-intensive uses such as lawns and vineyards.

The Pasadera subdivision is one example, where the County EIR specified and evaluated a maximum water use, but the County ignored that information when issuing building permits. As a result, the Pasadera subdivision vastly exceeds the amount of water estimated for the subdivision and analyzed in the EIR. This DREIR for the September Ranch subdivision ignores the County's history with these key issues.

Would the Water Use Reports (p. 8) submitted to the County and the MPWMD be public records? The EIR should consider a mitigation that these Reports be public records. That is the only way the County and the applicant can be held accountable for water use.

The DREIR claims, without support, that "both MPWMD and the County will review those [water use] reports and address any excess use to ensure that the total amount of water use at buildout remains at or under 57.21 acre-feet per year" (p. 8). There is no proof that the County of MPWMD will do so, and the resource-short public agencies do not have the funding to ensure compliance. Without funds, staff, and resources to carry out this critical job correctly, it will not be done and the applicant will not be held accountable, and this would be yet another subdivision for which the County ignores the EIR due to claims of prosecutorial discretion and limited resources.

Further, there is no discussion of <u>how</u> either the "MPWMD and the County will review those [water use] reports." Would the reports be reviewed at a public hearing to inform the public of the status and to allow public input? Who would review the reports, using what criteria? Would any action taken by the County be appealable or reviewable by a Court? Or, as County history has shown, would the County assign the review to a lower-level land use technician who is not trained in the issues and who could sign off on the report without any public notice?

Further, the EIR fails to identify or discuss <u>how</u> the County would "address any excess use to ensure that the total amount of water use at buildout remains at or under 57.21 acre-feet per year." What steps could the County take? The possible steps need to be discussed and analyzed here for effectiveness and adequacy. That way both the public and the applicant are informed as to possible consequences and accountability.

The EIR should require a mitigation requiring the applicant to place $100,000 funds in an escrow account for the MPWMD to hire an independent monitor to review the Water Use Reports and to make a public report of the results. The funds should also be used for endorsement to ensure that the water use remains at or below the maximum.

The EIR should further require a mitigation requiring the individual property owners to pay fees for enforcement against their properties, and for the Ranch property owners as a whole to replenish the escrow funds when they drop below $10,000.

The EIR should further consider requiring that the County be fully responsible for all duties assigned or described as being within the MPWMD's powers, in the event the MPWMD fails to exist, or is replaced by a successor agency which does not fulfill the EIR conditions here.

The EIR should determine whether enforcement of the Ranch's conditions would be subject to prosecutorial discretion by the County, and investigate and find out all it can about the environmental impacts of that discretion. If the County has discretion to enforce the conditions, and exercises its discretion to not enforce the conditions, or to enforce them in a way that allows water use higher than 57.21 AF in any one year, what are the impacts?

The EIR should consider a mitigation of prohibiting vineyards in the September Ranch subdivision. If not, the DREIR should investigate and disclose the potential impacts of allowing vineyards. Even dry-farmed agriculture would have direct water impacts, because it would create increased demand and would reduce the amount of water flowing into the purported September Ranch aquifer. That would call into question the entire EIR analysis as to that purported aquifer's ability to supply the subdivision and the impacts on the overdrafted Carmel Valley aquifer.

The EIR should consider a mitigation of prohibiting lawns or other turf in the September Ranch subdivision.

The EIR claim that "the type/quantity of landscaping and fixture units are controlled through this regulatory/permitting process" (p. 8) is also wrong, as explained above, because the County has never controlled fixture units or the type/quantity of landscaping (except in the most general sense at the time of the final map, but not in perpetuity, and even then the County can point to only one example).

Equally false is the subsequent claim that "the single most important factor controlling water demand for residential subdivisions in Monterey County is the amount of water authorized for each subdivision" because, as described above, the County has historically ignored the amount of water demand projected in County EIRs, and has issued permits to houses within County-approved subdivisions without deference to that projected water demand. The Monterey County Water Resources Agency has repeatedly stated that it does not monitor water use in subdivisions approved by the County. This history is further proven by notes of County meetings with MPWMD, elected officials and others, and MPWMD statements in the County's possession.

The MPWMD provided to the County extensive and detailed water demand data. Much of that data is not included or disclosed in the DREIR. In 2006, the MPWMD's current data showed that average water demand for new comparable market rate houses in Monterra was 0.814 AFY, in Quail Meadows was 1.208 AFY, and in Pasadera was 1.218 AFY. The DREIR ignores that information.

The DREIR's claims that "a parcel's individual water demand tends to be higher during construction" and "when its landscaping is being established" are unsupported and wrong. As shown by the annual reports submitted by Canada Woods and Santa Lucia Preserve (Rancho San Carlos) in the County's possession, a parcel's water demand during construction is extremely low. Similarly, those reports show that the demand when landscaping is being established is also low. Other reports in the MPWMD's possession provide similar evidence. (See, e.g., Canada Woods WY 2008 report, table showing per-lot construction water use to be close to zero except for one anomalous outlier high user.) This data contradicts the County's unsupported and unbelievable claim that houses under construction use more water than occupied houses. Further, the limited raw data available identified as "construction" use is of limited application because it does not clarify whether it is residential, commercial, golf course irrigation, or other use.

The DREIR discussion of EBMUD and US EPA (p. 10) is irrelevant and misleading. The MPWMD is at the leading edge of conservation information. Information from outside the area, and from entities that are not similar to the MPWMD, can be misleading. The cited EBMUD/EPA study addressed older houses, retrofitting and reduction of use in another part of California. None of that is relevant to the September Ranch analysis or the MPWMD expertise at issue here. The MPWMD estimates actual current use using specific fixtures and based on data gathered from similar developments with similar climates on the Monterey Peninsula. The non-local, non-specific studies with undisclosed data as to climates, house sizes, landscaping, and other critical variables should be deleted from the analysis, or at least qualified to describe the differences better and how they would or would not be applicable to a knowledgeable discussion of September Ranch. Averages from other areas is not an accurate estimate of what the September Ranch homesites would use, especially compared to water demand information for comparable nearby subdivisions.

Exactly what are "low-water-use plumbing fixtures"? Does that mean every water-using fixture must be at the lowest possible use? Does it require:

- Ultra low flow washing machines? (and if so, 18 gallon or 28 gallon maximum? Who decides which one? What are the differing impacts of each?)
- Ultra low flow dishwashers?
- Ultra low flow toilets (as opposed to 1.6 gal. low-flow)? and which ones?
- Are rain bars permitted?
- Are multiple showerheads permitted?

What would prevent a property owner from, after getting final building approval, replacing low-flow fixtures with high-use fixtures?

What is the source of Table 1? Who prepared it?

Table 1 is misleading because its title is "September Ranch Water Demand" and it lists pools on it, but the demand is interior only, and does not include exterior uses such as pools and lawns.

Why are turf and lawns not considered water-intensive uses? (See p. 13 and condition 33.)

There are no prohibitions on lawns or other water-intensive landscaping. The conditions state that low-water use and drought tolerant plants shall be used, but do not prohibit water-intensive plants. (Cond. 123). The County should mitigate the project's water impacts by prohibiting lawns and turf.

The County should mitigate the project's water impacts by prohibiting water features (Cal. Code Regs., tit. 23, § 491 (qqq) "water feature" means a design element where open water performs an aesthetic or recreational function. Water features include ponds, lakes, waterfalls, fountains, artificial streams, spas, and swimming pools (where water is artificially supplied). The EIR's proposed acceptance of these water features at the September Ranch subdivision is astonishing, due to their potential unanalyzed water impact.

The Subdivision Committee approved the September Ranch subdivision project with a specific prohibition on swimming pools. In August 2006, the Planning Commission approved the project based on a prohibition on swimming pools (Cond. 33), and understood the prohibition, as demonstrated by their discussion of it, as shown in County files.

What is the difference between "low water use" and drought tolerant" plants? (See p. 13.) Conditions 122, 123 and 124 appear to be internally inconsistent by using different, and conflicting terms.

- How does a property owner know the difference?
- Is there a definitive list of low water use plants? If so, who maintains the list, and what are the parameters for being placed on the list?
- Is there a definitive list of drought tolerant plants? If so, who maintains the list, and what are the parameters for being placed on the list?
- How can the conditions be enforced if there is not a definitive list of each type?
- What if the property owner claims that a plant is drought tolerant, but the public agency claims it is not?
- How would such disagreements be resolved?
- How would the public interest and the EIR analysis be considered in that resolution?

It is easy to envision repeated and acrimonious disagreements between the public and property owners over the type of plants, especially where there is a high water use on the lot. The DREIR should addresses these issues.

- How will the property owners be held accountable for ensuring that the exterior water use does not contribute to an exceedance of a per-lot limit?
- Will there be a per-lot limit on exterior use?
- How will that be enforced?

The County should impose a mitigation requiring separate water meters for interior and exterior uses. That is the only way to try to get any accountability.

Are "water efficient irrigation systems" defined? (See p. 13 and condition 123.) If so, where? If not, it is easy to envision disagreements over the compliance with this condition. Unless the condition describes the performance goals of the systems, it cannot be enforced as relied upon in the EIR.

A Sonoma landscape architect is not "local," as the DREIR claims. Further, there is no evidence the author has ever worked in Carmel Valley, or that his conclusions are valid in Carmel Valley. As footnote 21 admits, the Sonoma consultant had plants on his list that did not conform with the plant lists maintained by the County and the MPWMD, which calls into question the applicability of his conclusions to Carmel Valley.

Is the EIR proposing to limit the landscaping in the subdivision to the plants on Table 2 and the plants on the County's and MPWMD's drought tolerant lists? If so, where is that proposed condition or mitigation? If not, how can the EIR rely upon the table or those lists, and how has the EIR evaluated the water demand impacts of other landscaping? The EIR should consider a mitigation that limits the landscaping in the subdivision to the plants on Table 2 and the plants on the County's and MPWMD's drought tolerant lists.

What exactly does the term "short term exceedances" mean on page 15? How exactly will the MPWMD Pro Rata Expansion Capacity rule prevent them? Please explain in detail.

If the MPWMD is dissolved or taken over by an entity that does not enforce or carry over the Pro Rata Expansion Capacity rule, what possible impacts might there be? In that event, how, if at all, would exceedances be prevented? This scenario is a reasonably foreseeable one, given the multiple attempts in the past ten years to dissolve the MPWMD or absorb it into another agency that would not have the same commitment to and expertise on water management.

The EIR should impose a mitigation that imposes an affirmative duty on the County to enforce all applicable MPWMD rules in the event that the MPWMD cannot or does not enforce them.

All of the duties, roles, and responsibilities identified as belonging to the MPWMD should be made affirmative duties of the County to enforce on this project. The tasks should not be foisted onto the MPWMD.

The DREIR should anticipate and investigate possible liability from takings and other lawsuits against the MPWMD and from individual property owners who are denied water permits for any reason by the MPWMD or the County? Would the County or MPWMD have the authority to settle litigation by giving out water permits? If so, what environmental review would there be of that action? What public review would there be?

If a September Ranch lot's actual water use is over the MPWMD-permitted fixture-unit amount, but the lot has only drought tolerant plants on it and low water fixtures, what would the County do, if anything? The MPWMD would not do anything to the lot owner, or to the subdivision.

The DREIR should investigate and discuss this foreseeable scenario, and propose appropriate mitigations to prevent exceedances of the permitted limit, and to ensure cost-efficient and effective enforcement mechanisms and processes.

The DREIR claims that the "maximum landscape allowance" for each lot will be 0.26 AFY (p. 16). However, the DREIR fails to require that as an express limit on each lot, either from a MPWMD-permitting standpoint or from an actual use standpoint. The DREIR should impose a mitigation effectively limiting the landscape allowance to a maximum of 0.26 AFY. Absent that limitation, the DREIR analysis fails, because the actual usage could exceed the 0.26 AFY amount relied upon in the DREIR. The DREIR does not analyze the impacts of possible exceedances of the 0.26 AFY projected estimate per lot. The EIR should also require a mitigation to enforce that limit. Absent that enforcement, the EIR analysis fails, because the actual usage could exceed that amount.

Because the EIR claims, "Available methods for treating the Project's water supply could result in treatment losses ranging from 15% to 0% of total Project use" (p. 16), the EIR should impose a mitigation for potential water impacts that has the following performance standards:

- Requires a treatment method with a 0% loss, or at least 3% or less.
- Imposes strict enforcement mechanisms to keep that loss at the required level.
- Imposes strict steps to be taken by the subdivision as a whole if that loss level is exceeded.

The DREIR analysis of water treatment demand is confusing and misleading. After the introductory statements about loss percentages, the DREIR then uses at least three different measurements, without clarifying the three different terms. Initially, the DREIR presents information for pellet softening as "reject stream" in absolute numbers rather than a percentage. Is "reject stream" the same as "loss"? If so, what is its loss percentage range?

The DREIR then uses a different measurement for multi-stage reverse osmosis (which the DREIR should spell out rather than use the acronym "RO"), identifying a percentage loss similar to the percentage loss range in the introductory paragraphs.

The DREIR then uses yet a third measurement to describe nonfiltration, this time describing "overall water recovery." Is "overall water recovery" the same as loss? The reader has to guess that the inverse of the "overall water recovery" is the loss, which means that 90% inverse water recovery is 10% loss, and 97% is 3% loss.

None of the three options presented in the EIR have a 0% loss, which the EIR stated is possible. The EIR should describe a treatment with 0% loss. As mitigation for the water impacts, the EIR should require such treatment for this subdivision. That approach would be far more effective in ensuring the subdivision stays within its projected water system loss estimates than giving the applicant the choice to choose a water treatment method that consumes up to 10%.

Who, in implementing and enforcing the proposed condition PBDSP003, determines what is "possible" under the terms of that condition? Who, in implementing and enforcing the proposed condition PBDSP003, determines what is "expeditiously" under its terms? What guidelines will be relied upon for the County to interpret these terms, and other vague or broad terms used in the proposed conditions? Such terms are far too fuzzy either to mitigate for potential impacts or to be enforceable in a project as controversial as the September Ranch project is, has been, and will continue to be.

There appears to be no accountability if the treatment method selected by the applicant has a loss of greater than the range allowed in the condition (proposed for up to 10%). The DREIR should investigate this, and impose effective mitigation to ensure that the losses do not exceed the amount projected in the DREIR. The EIR should require, as mitigation, accountability and regular public reporting of the water losses. The two audits required by the proposed condition should be required to result in reports which would submitted within a week of the audit to the public agency, which would then become a public record. The DREIR should also impose mitigation that, in the event of a system loss higher than projected, would effectively reduce the overall subdivision water use to the 57.21 AFY or lower.

SURVEY OF AVAILABLE WATER DEMAND DATA

County claims that it cannot obtain information from Ambler, Hidden Hills, and Ryan Ranch water areas (p. 19), and that if and when such data is submitted, the Board of Supervisors can review it. This approach is flawed. The EIR preparer should investigate and get the information and revise the DREIR to incorporate it. It would not be meaningful to merely present unanalyzed raw data to the decision makers. Further, it thwarts CEQA not to include this data, and an analysis thereof, in the DREIR circulated for public comment.

The DREIR also fails to disclose the lot size, development envelope, and building envelope size for subdivision which is uses as comparisons for water use purposes. The County has this information in its possession because it approved the subdivisions, and because its Geographic Information Systems has this data.

The broad data (Table 4, pp. 20-21) of average water use for cities and large areas within the County are not helpful in the EIR analysis because they are not comparable to the September Ranch project. The EIR should focus on the comparable subdivisions.

Exactly where in the County is Rancho Fiesta located? Exactly where in the County is Rancho Del Monte located? What is the climate, and the average lot sizes, and type of development? Without that information and associated analysis, the EIR fails to provide meaningful information as to those areas.

The severe flaws in this DREIR section arise in part from the DREIR's reference to and reliance on DREIR Appendix B. Appendix B is deeply flawed. Appendix B claims it is a "survey of available water demand data, 2002 to 2007." However, Appendix B is not a "survey." It is not accurate, it is not complete, it is misleading, it is not explained, and it is internally inconsistent. Key problems with Appendix B are identified in the discussion below. We identify several critical examples of the problems with the Appendix B charts in particular and the DREIR discussion of water demand in general.

A fundamental flaw with Appendix B is this: the data within the charts is not the raw data. The raw data was apparently massaged and manipulated to arrive at Appendix B, but the DREIR does not explain how or why the data was changed. The DREIR also does not present either the raw data or the calculations made by the EIR preparer to arrive at the figures in the charts. Critically, none of the raw data used to arrive at the any of the County or "other" subdivision demand figures in the Appendix B charts is provided in the EIR or even included in the list of "Supporting Documents to

Draft Revised Water Demand Analysis," with the sole exception of document 26, the Canada Woods data for Water Year 2008.[1]

These omissions strike at the heart of the EIR process. These omissions mean that the public cannot evaluate the claimed water figures in the chart, or review the calculations and assumptions used to arrive at them, or test them for accuracy. The underlying raw data should be released, along with the EIR preparer's calculations and assumptions, and the DREIR should be recirculated with this data. The public has repeatedly shown itself to be better at analyzing the September Ranch water data than the County's EIR preparers. Three different Court reviews have supported the public's analyses, and rejected the County's analyses. Without public accountability for its water analysis, the EIR fails under CEQA.

Appendix B includes many fundamental errors and omissions. Several of these problems are identified below:

As one example, the charts use confusing and misleading column headings. All "market rate" lots within a subdivision are blended, which the chart fails to disclose. However, in key cases, there are important differences between types of "market rate" lots available within a single subdivision. For example, Pasadera has "standard" and "estate" lots, both of which are market rate. The charts appear to blend the two lot types for purposes of water use, along with other lots in the Bishop service area. This blending is inappropriate because, as County records show, the Pasadera "estate" lots are comparable to the proposed September Ranch lots, while the "standard" lots are not. In this example, the chart's data misleads the public and decision makers into thinking that the water use is significantly lower for comparable lots than in reality.

As another example, the Monterra market-rate lots are shown as numbering 48 in 2002-2003, steadily increasing to 76 in 2005-2006, but then dropping to 44 in 2006-2007 and 49 in 2007-2008. No explanation is provided for these inconsistencies.

As another example, footnote 1 to Appendix B is shown on the 2007 to 2008 chart only, and not on the charts for earlier years. The public is not informed whether that footnote is relevant to earlier years or not, and if not, the reason. This missing information is relevant to the analysis. Further, footnote 1 is confusing because it addresses units, whereas the column in which the footnote appears addresses customers. Units and customers are not the same measurement. This information should be clarified, and the terms corrected.

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[1] The MPWMD Monthly entitlement report (document 21) is the only other possibly relevant document, but it is a snapshot for May 2009 only. It does not cover previous years, or provide consumption for a 12-month period, or identify number of lots within any development area, or any other key data.

As another example of the errors and omissions of Appendix B, the charts fail to include columns for inclusionary housing and workforce housing, even though this data is available or can be extrapolated or estimated from existing data.

As another example, the 2004-2005 average use in Macomber Estates is listed as 12.05 AF per lot, which appears to be an error.

As another example, there is no analysis in the DREIR of what the Macomber Estates data shows: over the past three years, with the number of "residential customers" remaining steady at 20, the average water use of a Macomber Estates market-rate unit increased from 0.60 AFY in 2005-2006, to 0.72 AFY in 2005-2007, to 0.81 in 2007-2008. That is a 35% increase in water use in only three years. County records indicate that the increased use is based on projects being under construction, and gradually having its landscaping put in and becoming occupied.

Macomber Estates is very comparable to September Ranch in many ways, as County records show. The average landscaping water demand for Macomber Estates would likely be less than at September Ranch, because Macomber Estates is located in Pebble Beach adjacent to the Pacific Ocean, with a much cooler and moister climate than in Carmel Valley.

The DREIR also fails to disclose how much water use was projected and analyzed in the County's environmental review for Macomber Estates, and how much the actual use exceeds the County's projection. Further, the DREIR fails to disclose that the 20-unit Macomber Estates got only 10.0 AFY allocation from the MPWMD, or compare that 10.0 AFY figure to the current consumption of 16.17 AF.

As another example, the Appendix B figures are not identified as actual use or permitted use. Which are they? Or are they a combination? The DREIR fails as an informational document because it mixes different data and figures, and does not explain how it arrived at each figure within its tables and charts. Because the DREIR did not release the raw data, the public cannot review it. Instead, the DREIR preparer manipulated the raw data into different misleading figures for inclusion in the DREIR.

As another example, the column entitled "Number of Residential Customers" implies the number of actually occupied residences. The term is misleading. Does this title mean "active connections" which is how it is usually described by Cal Am and other reports? This title should be clarified, because otherwise public and decision makers would be misled into thinking that a "residential customer" means, with certainty, an occupied home.

As another example of the errors and omissions of Appendix B, as to the columns entitled "No. of Market-Rate lots," it is unclear if those entries are the total number, or the number for which any construction has been permitted, or the number

for which construction is complete, or the number for which there is actual occupation and therefore reliable water use data. These distinctions make a significant difference in the average water use. For example, Macomber Estates is shown as having 20 market rate lots. If five lots are under construction, five lots are developed with houses but not occupied, and 10 are developed and occupied, then the analysis of how each lot's water use was determined is critical to the chart – but the chart fails to include that information. Because the County issues building permits for these lots, the County has this information in its possession. It should be included in the DREIR.

What assumptions, data, and parameters were used to determine that a lot would be included in the "No. of Market-Rate lots" column?

- Are the lots in that column lots for which a building permit was issued?
- Are they lots for which occupancy has been authorized?
- Are they lots for which a building permit has been finaled?
- Are they developed lots that may not be occupied?

All this information affects the analysis, because County records show that lots under construction and lots with unoccupied homes use less than lots with occupied homes.

As another example, the "construction still under way" notation may be accurate, but the chart fails to disclose how it accounted for properties under construction, if at all, as opposed to occupied residences. For all subdivisions that are still under construction, the EIR should present its calculations as to how it accounted for the different types of uses: under construction, completed but not sold, and occupied. Santa Lucia Preserve, for example, reports the exact number under construction in its annual reports. How did DREIR analysis (as shown in the charts) account for that water use as a part of the overall residential demand?

As another example, the charts fail to disclose whether the use is actual use, and if so how the use was calculated. The DREIR fails to discuss the implications of using an average figure, which include unoccupied homes.

As another example, the charts fail to disclose the permitted water use from MPWMD permits, which information is available to the County.

As another example, the charts fail to include Quail Meadows, another subdivision located in Carmel Valley not far from the September Ranch, and for which MPWMD data is readily available both from MPWMD and from the County's files.

As another example, the charts fail to disclose the projected water use analyzed in the EIRs for specific subdivision projects approved by the County, including Canada Woods, Monterra, Santa Lucia Preserve, and Pasadera, as to each type of lot proposed (e.g., inclusionary, workforce, standard, estate, market rate). This information would show how wrong the County has been in the past in estimating water use, which further calls into question the County's speculation here.

The charts also fails to disclose average lot size, average building envelope, development envelope and explain the features of each type of lot (average lot size, projected house size, enforceable limitations on water use).

As to the many errors and omissions in the charts that comprise Appendix B, the bottom line is this: The County has the raw data in its possession and available to it from the MPWMD which, if properly analyzed, would show that the charts are inaccurate and misleading. The County's analysis either ignores this data or deliberately misunderstands it, or both.

By the time the responses to these DREIR comments are being prepared in October 2009, the 2008-2009 residential demand data from the subdivisions may be available and should be sought out for inclusion in the EIR analysis.

Appendix B claims – without explanation – that the 2006 Santa Lucia Preserve water use figures "are not available to the County." (Appendix B, fn.2.) As a result, the County omits any 2006 water figures from its analysis here. That omission is another example of the County's failure to enforce the Santa Lucia Preserve condition of approval. Further, that omission makes the DREIR data even more incomplete and unreliable. In fact, the DREIR is wrong. The 2006 water use report is in the County's possession. Our Office obtained the 2006 report from the County under a Public Records Act request.

Footnote 28 (p. 21) also claims that the water demand data from 2008 for Santa Lucia Preserve is "not yet available." Why not? Santa Lucia Preserve is the one subdivision for which the County required annual water use reporting. The reports are due early in the year. In the years 2002 to 2007, the reports for the preceding year were submitted in February or March. This DREIR was released in August 2009 – but the EIR claims that the 2008 figures have not been submitted by Santa Lucia Preserve. The report should have been submitted to the County six months earlier. This is another example of the County's failure to enforce its conditions of approval on a subdivision. The County has not even bothered to enforce this condition on the sole subdivision with this County reporting requirement.

The DREIR's claim of the Santa Lucia Preserve's water use in 2008 (see p. 23) cannot be correct, because by the DREIR's own admission (see above), the County does not have the 2008 information. The conclusion reached by the DREIR is incorrect because it does not have accurate data (it is missing two years) and because it does not explain its methodology.

The DREIR ignored the 2002 Santa Lucia Preserve report, which is helpful to show how much water homes under construction use. By our calculations, using a reasonable assumption about homes under construction, shows that the average use from 2002-2005 ranged from 1.03 to 1.57.

What were the DREIR's water use assumptions about homes under construction in the Santa Lucia Preserve? How did the DREIR arrive at its results? How did the DREIR test its conclusions?

The DREIR repeatedly tries to hide important water information by fudging the data. For example, the Santa Lucia Preserve water reports are based on the calendar year, not the water year (October to September) as claimed in Table 4 and Appendix B. Further, the DREIR fails to disclose the 2002 Santa Lucia water report, which is in the County's files. That particular report is enlightening because it discloses the minimal amount of water that houses under construction use. According to the 2002 Santa Lucia Preserve report, there were 34 residential market-rate active connections. That year, those 34 active connections used only 12.2 AFY. This figure is explained by the report, which explains that as of the end of the year there were only 6 occupied market-rate homes, and 28 under construction. That works out to around 1.6 AFY per completed home, and 0.01 AFY for homes under construction. The reports for the subsequent years all have similar results, and support a possible demand of 0.01 AFY for homes under construction.

Appendix B hides the fact that the Santa Lucia Preserve annual reports specifically identify the amount of water used by the market rate houses, and the amount used by the inclusionary housing. In the Santa Lucia Preserve reports, inclusionary housing is called employee housing. Whatever the reasons, the raw data presented by the reports is not consistent with the figures presented in the DREIR text or in Appendix B.

THE DREIR'S ASSESSMENT OF DEMAND DATA BY SUBDIVISION OMITS SIGNIFICANT AND MATERIAL DATA

The EIR analysis is inadequate because it does not use the available data, including the water permits issued by the MPWMD. In some places the EIR relies heavily on the MPWMD, but in this section the EIR ignores the MPWMD permit data entirely. Much of that data would be very helpful in the analysis, which is rendered incomplete and inaccurate by its omission.

Instead, for multiple geographical areas and subdivisions, the EIR preparer pretends like actual water use data is not available, and did not investigate further. This half-hearted attempt fails to fulfill the Superior Court's 2008 order and fails to meet the mandates of CEQA. Much of that important information is available from County records, including the records submitted by the public in the 2004-2007 County review of the project, which the County ignored then – and the EIR preparer is ignoring now. The County has the authority and ability to require annual water use reporting of subdivisions and individual lots. The County has known since the 1950s that the Salinas Basin was being overdrafted, since the 1970s that North County aquifers were being overdrafted, and since 1995 (Order 95-10) at the latest that the Carmel Valley

aquifer was being overdrafted. For all that time, the County should have required reporting of actual water consumption as a condition of land use approvals to increase its data as to actual water consumption in different areas of the County. Now, the County ignores its own role in created the lack of valuable water use data, and tries to pass muster with selected and heavily massaged data, and an analysis that is deeply flawed.

Repeatedly the DREIR claims that because the subdivisions are served by a water service provider that also serves the adjacent areas, the County cannot determine the water demand of the subdivision alone. The County ignores data within its control and possession. The County has in its records information as to the size of lots in various subdivisions. The County's Geographic Information Systems (GIS) department could have separated out the subdivisions from the surrounding parcels, and determined the approximate lot size within the subdivision. That information could have been compared to lot sizes outside the subdivision, to provide some guidance and further analysis. Additionally, the County could have compared the water use of the service area before and after the subdivision was approved and built out, which would provide further useful data. The EIR preparer could have used the MPWMD permit data for the subdivision and for the surrounding areas, because all of the permit data is public record. The EIR preparer did none of these things, and the analysis fails.

Recent MPWMD data in the County's possession shows that average water demand for new comparable market rate houses in Monterra is 0.814 AFY, in Quail Meadows is 1.208 AFY, and in Pasadera is 1.218 AFY. Older data for past permits showed water demand significantly higher than 0.5 AFY used in the EIR: 0.636 AFY for Monterra, and 0.827 AFY for Quail Meadows. For Canada Woods, the older data shows an average actual demand of 0.665 AFY for market rate homes and 0.32 AFY for inclusionary uses (2002-2005 water years). The County's records also include a 2004 EIR water demand estimate of 1.0 AFY per residence for Pebble Beach Company's plan. The EIR preparer should use this available data, and gather data for all recently issued MPWMD permits for all subdivisions that are being used as comparisons for the September Ranch project.

The Canada Woods subdivision EIR prepared by the County asserted that the market rate homes would use 0.379 AFY, and the inclusionary homes would use 0.167. The MPWMD data in the County's possession shows that the actual; permitted use is 0.665 AFY for market rate and 0.32 AFY for inclusionary homes. In other words, actual permitted usage is 175% and 192% of EIR estimates. The DREIR does not disclose or investigate this information.

The DREIR does not explain the relationship between the Monterra and Canada Woods systems or EIR analyses. Apparently the Monterra mutual water company is now part of the Canada Woods system. According to the report by Canada Woods/Monterra, the company's own projected water use of market rate homes under

buildout conditions is 0.62 AF. The DREIR repeats this information without identifying that the source is the developer itself. The source is not an independent analysis by the County or the MPWMD. Actual usages shown of 0.665 AFY and 0.32 AFY are averages of actual 2002-2005 demand. (The two start-up years of the market rate construction (2000-2001) should not be used here because the data is not reliable.)

The bottom line on the DREIR analysis is this: the analysis excluded critical information about comparable subdivisions because that information would show that the September Ranch per-lot estimates are much lower than the comparable subdivisions, and the September Ranch estimates are therefore unreasonable. For this reason, the DREIR fails as an information document, and will mislead the public and decision makers unless it is corrected.

For example, in an approximate 15-month period, the MPWMD issued 16 permits for development of 16 lots in Canada Woods, Tehama, and Quail Meadows. Of those 16 permits, only one was less than the EIR estimates for September Ranch. All the others exceed the September Ranch estimates, some by a significant amount. (See attachment.) This DREIR fails to include this available information, or to seek out and obtain the most current and comprehensive information available.

Monterra – The DREIR discussion of Monterra misleads the public because the DREIR and the developer's records do not disclose which of the market rate lots actually have caretaker units on them. The market rate lots are estimated at 0.50 AFY, and the caretaker lots are estimated at 0.12, for a total of 0.62 AFY. Instead, the DREIR and the developer assume the 0.62 AFY is the projected amount for all market rate lots, without specifying whether a caretaker unit has been built on the lot. The DREIR analysis assumes – without disclosing its assumption -- that 100% of the market rate lots have a caretaker unit built and occupied, which is unrealistic. This view – that 100 of the lots likely do not have caretaker's units on them – is supported by the developer's own data which shows that at buildout there are projected to be fewer caretaker's units than single family units (see 2008 Questa/Canada Woods report, Table 24). The County's own records show whether a caretaker unit has been approved and built on each of the developed market rate Monterra lots, but the EIR preparer failed to investigate those records. As a result, assuming that at least half of the lots have only a main residence on them, and not a caretaker unit, it is likely that the actual water use is far greater than the 0.50 estimates in the EIR.

Older data for MPWMD-issued Monterra permits showed 0.636 AFY, significantly higher water demand than the amount estimated for September Ranch. For Canada Woods, the older data shows an average actual demand of 0.665 AFY for market rate homes and 0.32 AFY for inclusionary uses (2002-2005 water years). Monterra Market rate home usage shows 2002-2005 average usage of 0.665 AFY for market rate.

The Monterra 2008 market rate home usage was 0.69 AFY, according to the Questa/Canada Woods report (at p. 32). However, this average is from 49 homes, at least six of which were essentially empty for much of the year, using zero or very low gallons per day for six months or more. (See Table C-2.) As a result, the average use would actually be higher, when the actual average use by occupied homes is considered. The average disclosed in the DREIR is further inaccurate because the EIR preparer did not investigate or disclose the number of homesites with approved and built caretaker's units. Without a built unit, the projected use is 0.50 AFY, which is much lower than the stated average of 0.69 AFY.

For all years, the data is ambiguous as to number to units, and whether one or both of the units were occupied throughout the year, or were empty, or were still under construction.

Further, the Monterra discussion does not address the seven ranch lots, which are projected to use 0.70 AFY, exclusive of caretaker's units and senior units. These lots may be most comparable to September Ranch. What is the actual use on those lots? What is the MPWMD permitted use?

Further, the EIR preparer did not investigate or disclose the financial situation of Monterra. The developers of that subdivision have filed for bankruptcy, and many of the lots are being foreclosed upon. The EIR preparer should investigate the current situation, including how the bankruptcy has affected the occupancy and the water use.

Tehama – The DREIR claims there will be 79 market rate homes at buildout (p. 22), but the Tehama website claims there will be 90 homesites. The DREIR should explain the inconsistency, and explain and provide the support for its claim.

The DREIR discussion of Tehama discloses that there are 14 market rate homesites, seven above and seven below the projected annual use of 0.62 AFY. The DREIR failed to disclose that the seven homesites that are above the projected 0.62 AFY use range from 0.77 AFY to 1.46 AFY in WY 2008 (Questa/Canada Woods 2008 report, p. 40.) The DREIR also failed to disclose that of the seven homesites below the projected use, three were essentially unoccupied (zero gallons of water per day for seven to nine months of the year, and a fourth had extremely low water consumption during the summer months (10 to 17 gallons per day in June through September), indicating that it was essentially empty during the hottest part of the year. (*Id.*, Table D-2.) Even assuming that this fourth residence was occupied, the DREIR failed to calculate the average actual home consumption of the 11 occupied homes. The inclusion of the three empty homes – with zero consumption for most of the year – skewed the average. According to the developer's records, the actual average consumption is much higher than the DREIR discloses, which misleads the public and the decision makers.

The DREIR discussion of Tehama also misleads the public because the DREIR and the developer's records do not disclose which of the market rate lots actually have caretaker units on them. The market rate lots are estimated at 0.50 AFY, and the caretaker lots are estimated at 0.12, for a total of 0.62 AFY. Instead, the DREIR and the developer assume the 0.62 AFY is the projected amount for all market rate lots, without specifying whether a caretaker unit has been built on the lot. The DREIR analysis assumes – without disclosing its assumption -- that 100% of the market rate lots have a caretaker unit built and occupied, which is unrealistic. This view – that 100 of the lots likely do not have caretaker's units on them – is supported by the developer's own data which shows that there are projected to be fewer caretaker units than single family units at buildout (see 2008 Canada Woods report, Table 25). The County's own records show whether a caretaker unit has been built on each of the 14 market rate Tehama lots, but the EIR preparer failed to investigate those records. As a result, assuming that at least half of the lots have only a main residence on them, and not a caretaker unit, it is likely that the actual water use is far greater than the 0.50 estimates in the EIR.

Pasadera – The Pasadera subdivision usage far exceeds its EIR projections, as County records show. The DREIR never addresses the current MPWMD water demand figures of 1.218 AFY for Pasadera. The DREIR muddles the water figures for Pasadera lots, which include "standard" and "structured" lots. It is unclear if the DREIR even considered the MPWMD raw data on Pasadera's "estate lots" which are most similar to the September Ranch market rate lots. Pasadera standard lots had an actual average use of 0.458 AFY, and the structured (inclusionary) housing had an actual average use of 0.320 AFY. The DREIR omits the information that the Pasadera estate lot had an average actual permitted water usage of 0.785 AFY, far more than the County's EIR estimate of 0.60 AFY for such lots. The County knew that the permitted fixture counts (the MPWMD's unit of measurement for water usage) exceeded the Pasadera EIR estimates by 33-37% in all three categories: estate, standard, and structured, but fails to disclose it in the DREIR.

The Pasadera EIR estimated that standard lots would use 0.35 AFY. The Water District provided the estimated and actual permitted uses for inclusionary ("structured") units, standard lots, and estate lots at Pasadera. The Water District data shows that the actual permits averaged 0.569 AFY for those standard lots, which is 63% higher than the Pasadera EIR estimate.

Exactly which category of lots are the ones analyzed by this DREIR in its presentation of Pasadera's water use for "market rate lots" – standard, structured, or estate? The data and information – and the DREIR's selection of specific data to use – should all be disclosed to the public in a recirculated DREIR.

To argue for its 0.5 AFY estimate, the past September Ranch EIR analysis used the actual permitted use of 0.569 for Pasadera "standard" lots. That selection was not

in good faith for two reasons. First, Pasadera standard lots are two-thirds of an acre in size, as County records show. By comparison, the market-rate September Ranch lots are from 1.8 to 12.3 acres in size, averaging 4.4 acres per lot. The average September Ranch lot is almost seven times the size of a Pasadera "standard" lot. Second, the water use for the Pasadera estate lots would be more comparable to the September Ranch lots. The Pasadera estate lots' estimated use was 0.6 AFY, and the six permits issued before 2006 for estate lots all exceeded that estimate, as County records show. The average actual permitted use for those estate lots was 0.785 AFY, 30% higher than the EIR-estimated "estate" lot use, and more than 50% higher than the 0.5 AFY September Ranch estimate. From approximately 1999 to 2003, the Water District actual permits of 68.286 AFY far exceeded the Pasadera EIR estimates of 51.876 AFY for those same lots. The current DREIR does not disclose this information, or make a good-faith effort to investigate the current data and water use.

Quail Meadows – THE DREIR fails to make a reasonable or good faith effort to find out all it can about the Quail Meadows subdivision. The DREIR merely claims that "Quail Meadows reportedly has an average lot size in excess of 1 acre." The County approved Quail Meadows, and the County's records show exactly what each lot size is, and what the average is. The County has many records that would enable a water use analysis. The County's water consultants even addressed Quail Meadows in past reports, which were provided to the EIR preparer:

> The Monterey County Planning indicated that there are 14 single family dwellings (SFD) at Quail Meadows that remain to be developed. MPWMD provided a list of water permits issued in Quail Meadows that included water allocated to each assessor's parcel number (APN) and the use (new SFD, pool, caretaker, fixtures etc.) as shown in Appendix A. An average demand per APN of 0 .726 AFY for the combined uses of new SFD and other uses associated with the APN was calculated. This AFY/APN was then multiplied by the 14 available building sites for a total of 10.2 AFY.

(Kennedy Jenks Technical Memorandum, No. 6, Rev. 3 (11 July 2006), p. 5.) Page 12 of that Technical Memorandum contains Appendix A, which is a printout of 84 water permits issued by MPWMD for Quail Meadows, with specifications as to the use being permitted. That is data in the EIR preparer's possession and in the County's possession that the EIR preparer omitted from this DREIR, instead claiming untruthfully that "the County was unable to secure segregated water data for the subdivision" (p. 24).

The Quail Meadows EIR projected that market rate units would have 0.414 AFY. Older data for past permits showed significantly higher water demand than that estimated for September Ranch: 0.827 AFY for Quail Meadows. Other MPWMD data

on the Quail Meadows subdivision shows that the permitted market rate houses average 1.208 AFY. That means for that time period that the actual usage is 292% of EIR estimate. The DREIR fails to disclose this information. The MPWMD's Quail Meadows spreadsheet (Appendix A mentioned above) shows most homesites (and their appurtenant uses such as swimming pools) have a demand well over 0.5 AF, and one has a 2.152 AFY demand. The MPWMD has available current data, which the EIR preparer evidently did not investigate.

The DREIR tacitly makes a concession regarding actual permitted water use, rather than actual metered use. Actual permitted water use is the amount of the Water District permit based on the total fixture units proposed for the homesite. The DREIR does not use actual permitted water use in any of the subdivisions, as estimated by the MPWMD when it issues water permits for specific uses. The DREIR does not explain why it omits this valuable information. It does not argue that actual permitted water use is not reliable; it simply ignores it. Why does the DREIR omit this essential and available information, thereby thwarting the informational purpose of the EIR?

Pebble Beach: The County's Pebble Beach Company EIR estimated 1.0 AFY for market rate homes. The 1.0 AFY figure was higher than the applicant-requested estimate of 0.8 AFY. That EIR was under way at the same time as the past September Ranch EIR. The Pebble Beach residential lots average 1.3 to 1.8 acres in size much smaller than the market-rate September Ranch average of 4.4 acres per lot. The Sierra Club's comments on the past September Ranch draft EIR asked the County to address the Pebble Beach 1.0 AFY estimate. The County did not respond. In this DREIR, the County still has not addressed these key issues. The Sierra Club repeats its question.

Additionally, the DREIR failed to investigate or disclose water demand information for the homes recently approved or permitted by the County in Pebble Beach Company or in the Rancho San Carlos/Santa Lucia Preserve (Potrero Subdivision). The County has in its possession records of the numbers of plumbing fixtures and landscaping for these approvals, both from the County approval processes and from the MPWMD water release forms that are submitted to the County.

As a condition of approval, the County could require all subdivisions to report actual water use, which would mean that the County would have reliable per-homesite data on which to base its EIRs. However, other than Rancho San Carlos, the County has not required this information. As County records show, the County has known for years that its EIR estimates are not accurate predictions of water use. As a result of not requiring this information, the County makes an excuse that it does not have actual water use data to support its arguments that the Water District's actual permitted and actual water use records should not be relied upon. The County failed to use its best efforts, did not perform an adequate investigation, and did not inform the public.

THE SO-CALLED WATER "CAP" IS NOT ENFORCEABLE. THE COUNTY APPEARS TO HAVE ABANDONED THE CONCEPT OF A WATER CAP.

In 2006 the County placed two conditions of approval (conditions 45 and 46) on September Ranch as a purported "cap" on subdivision water demand. The Sierra Club, Save Our Carmel River, and Patricia Bernardi challenged them, arguing that the conditions were not meaningful or enforceable. In 2008, the Superior Court agreed. This DREIR leaves those two unenforceable and meaningless conditions in place, unchanged. As proposed, the County would not place an effective or enforceable cap on September Ranch water demand.

Condition 45 does nothing more than require the applicant to submit a plan. The plan is a piece of paper estimating fixture units for phases of the subdivision. The condition has no enforcement mechanism and no accountability as to actual use.

Condition 45 states that "the applicant shall submit a . . . Plan showing the proposed total fixture unit count for each lot within that phase." However, the County planner stated that "it will be impossible to estimate the water use for each lot prior to filing the final map with each phase." The applicant agreed that it would "be infeasible to assign a water use for each individual lot." The 2006 Final EIR Master Response 17 "water demand conclusions" had almost identical language to the applicant's arguments. There was no evidence of an independent EIR investigation of those representations by the applicant, and there is essentially no change to that in this DREIR.

Condition 46 merely enables a discretionary determination by the Board of Supervisors in the future. There is nothing binding on the County. First, faced with a higher water usage than the EIR estimates, the Board may choose to do nothing under Condition 46. Second, the Board's actions would be discretionary, which eliminates third party review including any meaningful review by a court. Third, Condition 46 is not permanent, although project build-out and ongoing uses would "continue decades after County condition compliance and CEQA monitoring [expire]" (MPWMD comment in County files).

Condition 46 states that a quarterly water use report shall be submitted. "If any report demonstrates that actual water use for the entire subdivision is within 5% of the maximum," then the Board of Supervisors may make a discretionary determination. County records show that the County Water Resources Agency expert disagreed: he did not believe "the 95% cap and three month reporting period is an effective way of ensuring that lots are not created that cannot be built upon." He stated that the proposed language of Condition 46 would not work because he could "imagine an infinite number of scenarios related to the timing of final maps and water use reports." The public had the same concerns, as County records show.

In 2008, the September Ranch applicant's attorneys admitted to the Superior Court that there is no enforceable water limit on the September Ranch subdivision, saying, "I wouldn't really call it a cap. What I would call it is a target." Under CEQA, that approach is not acceptable. The EIR must reasonably investigate and analyze the impacts of providing water to a project. Without an effective and enforceable limit, the EIR must investigate the potential impacts of exceeding the amount estimated in the EIR

The record shows that the Water District would accept only a "per home site consumption limit." A "per home site consumption limit" was also recommended by the Water Resources Agency. However, a per home site consumption limit was not imposed by the County in 2006, and is not proposed to be imposed by the County in this DREIR.

The Superior Court agreed that the County's "cap" on water demand was not enforceable. (Final Decision, dated April 30, 2008, p. 36.) The Superior Court held that the cap was not substantial evidence to support the conclusion that the water demand would not be exceeded. (*Ibid.*) However, the County has not changed the conditions imposed in 2006 and rejected by the Superior Court.

On remand, the County appears to have abandoned its claim that the County would place an enforceable cap on September Ranch water demand. Instead, it appears to place all the burden of monitoring the subdivision's water use on the MPWMD, which has not agreed to that burden, and is not funded or staffed for that burden, and has no mandatory duty to enforce the limit. The County has not imposed funding mechanisms to fund MPWMD enforcement.

It is unclear what the County is proposing in the DREIR. Exactly what is the County proposing to do, and what tasks is it proposing that the MPWMD carry out? Has the MPWMD agreed to the additional work? Has the County incorporated all of the MPWMD's conditions and mitigations into the project? If not, how can the County require the MPWMD to have the duty of enforcing what the County should be enforcing?

As the Supreme Court has held, the County and the EIR must assume that the entire project will be built out. Choosing not to build out certain portions of a project is not an adequate EIR methodology for mitigating the impacts. Therefore, the approach urged by the DREIR (p. 27, first paragraph, especially underlined sentence) is not a valid approach under CEQA. The proposed pro rata expansion policy would not be effective in many scenarios, as the County Water Resources Agency determined long ago, as shown in the County records for this project. (See, e.g., July 10, 2006 email from Tom Moss, Water Resources Agency, to Laura Lawrence, County planner.)

Further, the pro-rata expansion proposed by the County (p. 27) has already been found inadequate by the Superior Court. Even if the early development lives within its EIR's water estimates, there is no guarantee that, post-buildout, all units will be occupied, and consumption will exceed the estimated 57.21 AFY. At that point, it appears the County would have no role in ensuring that the subdivision stayed within the water demand estimate as shown in the EIR. Is this correct? If so, why? It appears that the County wants to push full speed ahead to give the land use approvals of the project, and then abdicate any enforcement responsibility for the resulting project.

To the extent the County argues that the water use data from the MPWMD permits is not reliable because it is permitted water use as opposed to actual water use, the County is essentially admitting that the proposed September Ranch "cap" (condition 45) is also not meaningful because the "cap" would be based on the "proposed total fixture count for each lot" (*ibid*). The now-discredited 2006 Final EIR tried to distinguish the MPWMD water permit data for Quail Meadows "[b]ecause the permitted numbers do not reflect actual consumption data" and "the County believes the permitted quantities have limited relevance to predicting demand at other subdivisions." But that position is inconsistent with the County's "cap" (condition 45) on September Ranch, which is based purely on fixture unit count. Fixture unit count is the basis for permitted usage. The County wants it both ways: to reject actual permitted water use (based on MPWMD fixture units) from nearby Quail Meadows because the numbers are higher than the County would like for its September Ranch analysis, but to rely on theoretical fixture unit permitted usage for its September Ranch "cap."

The County has the authority to regulate, monitor, and control water use on September Ranch. There is no reason the County cannot and should not assume responsibility for doing so. Instead, the County proposes to make the MPWMD do the work. However, the County has no ability to require MPWMD to take discretionary enforcement action under MPWMD rules. For that reason alone, the DREIR fails to adequately mitigate the water demand by placing an effective limit.

The County should monitor September Ranch water use during buildout to ensure existing connections are not exceeding their individual water use as established by the MPWMD permits based on fixture units and landscape estimates. The DREIR does not propose any such monitoring or mitigation.

The DREIR does not investigate or discuss oversight and enforcement authority of water use after buildout is completed. This is a glaring omission. The County should have the affirmative duty in perpetuity to oversee and enforce water use, to ensure that the water use does not exceed the 57.21 AFY analyzed in the EIR.

The County should require the applicant to record a deed restriction on each September Ranch parcel specifying that the parcel will be subject to strict water use limits that are enforceable by the County at any time, and further specifying that the

subdivision is held to an enforceable limit of 57.21 AFY. The deed restriction should further specify that the water use limits can and will be enforced by a flow restrictor placed under the County's authority, and that the property owner agrees to such restriction. The deed restriction should further specify that enforcement costs will be billed to the property owner and will be collected, with interest, along with attorney fees for any enforcement litigation.

As a mitigation and condition, the County should ensure that it has reasonable access to the gated community and to the water meters of each of the parcels.

As mitigation, the County should require an annual report to be filed with the County, specifying all the same information as shown in the DREIR (p. 28) to be included in a report to be filed with MPWMD. The report should be a public record. This report would also expand County knowledge of actual water use, so the County does not continue to ignore it, or pretend it does not have such data.

As additional mitigation, the County should compile the information it obtains from September Ranch, Canada Woods, Santa Lucia Preserve, and other subdivisions into a watershed-wide report on water use that is presented to the County Board of Supervisors. The County would have the affirmative duty to present the raw data and analysis of the data in the annual report.

What does this DREIR sentence at page 28 mean?

> MPWMD's general manager will compile this information into a District-wide report that will be presented to MPWMD's Board of Directors.

There is no support cited for the claim. What import does it have for the County or the DREIR? Is there a current obligation for the MPWMD general manager to take this action?

What does this DREIR sentence at page 29 mean?

> All individual Water Permits will include water limits for indoor use.

There is no support cited for the claim. The sentence is very misleading, and it is wrong. Individual water permits issued by the MPWMD do <u>not</u> "include water limits for indoor use." There is no cap for interior use proposed in this DREIR. The DREIR should disclose that.

As to the claimed "limits on outdoor water use," what about seasonal limits?

- What about the impact of drought years?

- Is there any flexibility or discretion in enforcement?
- Who enforces the limits on "outdoor water use"?
- Is that enforcement discretionary?
- Would the September Ranch lots of less than 10,000 square feet have outdoor water use limits? If not, why not?
- What steps would be mandatory, by what entity, if a lot of less than 10,000 has extraordinarily high water use, far exceeding the estimated use?

The County should require individual planning and building permits with a maximum water use (interior and exterior combined) that the County would enforce, to ensure the subdivision stays within the estimated 57.21 AFY use.

The County should strictly limit the issuance of building permits by monitoring permitted and actual water use for te September Ranch subdivision. The County should track whether the existing connections are exceeding – either individually or collectively – their permitted amounts.

The MPWMD's process (p. 29) allows the first 50% of the allowed connections a carte blanche as to the water use they request and obtain. It is only the second 50%, at most, that might be subject to limitation. To prevent this inequity, the County should place a maximum water use for each parcel. Otherwise, the first 50% can obtain a disproportionate amount of the estimated total water use for the subdivision. The per-parcel use limitation would be strictly enforced by the County at the planning and building phases, and in perpetuity.

The MPWMD's Pro Rata Expansion Capacity process would allow a system to exceed its Pro Rata capacity. The DREIR does not discuss these potential impacts. Further, the MPWMD's discretionary actions under its rules are not enforceable by the County.

The MPWMD does not have funding for additional enforcement of conditions. As stated earlier in this comment letter, the County should impose a mitigation of a $100,000 escrow account to fund enforcement. In the event that the amount drops below a minimum (say, $10,000) there should be an automatic procedure, such as an impound account or other County collection procedure that does not cost the MPWMD any additional resources, which deposits additional funds into the escrow account. Unless it is funded, the enforcement will not happen.

Additionally, there is no evidence that the MPWMD has the ability to inspect a gated subdivision without express permission from the owners. How are MPWMD inspectors going to be able to get past the locked gate and guardhouse? How are the inspectors going to get access to the properties that have exceeded limits?

Even if the MPWMD could get on the property, what legal obstacle stand in the way of the MPWMD enforcement? Would each of the September Ranch properties have a recorded deed restriction stating that the MPWMD is allowed on site at any time, and may inspect interior fixtures at any time, and may place a flow restrictor at any time? As a mitigation, the County should consider such a deed restriction as a condition of approval.

Even if the MPWMD had enforcement ability, which water use limits would the MPWMD enforce? Would it be the MPWMD-permitted limit for the home? A single County-established limit for all parcels? A County-established limit for each individual parcel? When would those limits be established, and with what public review? Would the MPWMD enforce exterior use, or interior use, or both?

How would the MPWMD know which properties are the ones that are exceeding their limit? The annual water use report would hide actual addresses, and report the data under an anonymous number, the same as the Monterra and Tehama reports (e.g., Market Rate 1, Market Rate 2, etc.). The County should impose a mitigation requiring the report to include actual street addresses and assessor's parcel numbers. This EIR should consider this mitigation, and investigate and disclose its legality under the applicable statutes and rules (for example, the Public Utilities Commission and others).

Further, at best the MPWMD gets the information a year out of date, so it would not be able to effectively enforce. The MPWMD is a very busy public agency with a wide range of significant statutory duties. In addition to its existing duties, it cannot be expected to spend the time needed to enforce the County's obligations.

The DREIR analysis of Hidden Hills is out of date as of the release date of the DREIR. The MPWMD allowed applications in the pipeline to continue the development process. By so doing, the capacity limit could be exceeded. The EIR preparer should investigate and disclose the actions process and current status.

As to Ryan Ranch, the DREIR fails to disclose that the MPWMD was sued by Cal Am for the MPWMD enforcement action on Ryan Ranch. Further, the DREIR report of "several meetings" held by the MPWMD is meaningless. Meetings do not enforce limits.

During and after buildout, the MPWMD's enforcement of water permits is discretionary. See, for example, the multiple uses of the term "may" in the description of the MPWMD authority on DREIR page 31.

What water demand limits would the MPWMD going to enforce – the permitted limit, a per capita limit, or something else, and if so, what? Would there be allowances for children, pets, landscaping, water features, or residents with special needs? On

what basis, and using what parameters, would the MPWMD choose which property to enforce? If the water treatment system loses an extraordinary amount of water due to poor management or mechanical failure, would that amount be held against the 57.21 AFY system cap? In that event, how would the MPWMD choose to enforce the cap, and against which users, and in what order?

The DREIR makes the remarkable and unsupported claim that "[t]he County's water use enforcement authority begins with the issuance of the building permit" (p. 32). That is not accurate. The County's water use enforcement authority begins at the subdivision approval process. The low level of the County's understanding of water throughout the 10-year EIR process is evidence that the County does not understand and does not property execute its water use enforcement authority. The EIR analysis is where the County's water use enforcement authority begins. It continues through County denial or approval of the subdivision. If the County approves the project, as the County staff has repeatedly tried to make happen, then the County as mitigation can adopt specific enforceable water use limits, and strict enforcement tools. The County's water use enforcement authority can continue at the planning stage. The County can require a specific maximum fixture count with each planning submission for planning approval. The County should do so here, as mitigation. Otherwise, the early buyers can use a disproportionate share of the available water, and the later buyers can be denied water use.

As mitigation, and to prevent future property owners from making takings claims against the County or the MPWMD, the County should require deed restrictions for all September Ranch parcels that disclose the water limits on each use and on the subdivision, and that disclose the strict affirmative duty of the County to take immediate steps to control water use.

As further mitigation, the County should adopt a condition that requires the September Ranch to eliminate all non-residential water use immediately if and when the system water limit exceeds 57.21 AFY.

The County's purported 57.21 AFY system limit should specify whether it is a calendar year or water year. Further, if partway through the year the County sees clear trends that show that the water use will go over the limit, the County should be required to take prompt action before the limit is exceeded, to prevent the exceedance.

Proposed condition PBDSP033 should state that all costs for investigation and enforcement of the water use, as a part of the investigation of the need for a flow restrictor, will be charges to the property owner of the low subjected to the action.

Proposed condition PBDSP033 does not place a duty on the County to <u>do</u> anything with the information provided by the property owner.

As to proposed condition PBDSP033 and all other proposed conditions and mitigations, as well as those that this letter suggests the County assume, there is a fundamental problem. The County has repeatedly argued that it does not have an affirmative duty to do anything, even under a statute. For example, in *Guzman v. County of Monterey* (2009) 46 Cal.4th 887, the County argued that it did not have an affirmative duty under an existing statute to do anything with water reports that showed a serious public health and safety risk.

Pages 32 and 33 of the DREIR variously talk about the "buyer," the "property owner" and "the lot purchaser." Are these all the same persons – the future owners of properties within the September Ranch subdivision? If so, the DREIR should be amended to clarify this.

On page 33 of the DREIR, the paragraph beginning with the words "As part of this process" ("Paragraph") is inaccurate and makes several misrepresentations about the statutory requirements of the Model Water Efficient Landscape Ordinance (CCR, § 490 et seq.). Several of the more serious misstatements are identified below.

Section 492.3 lists six required elements of a Landscape Documentation Package, and the Paragraph identifies only five of those requirements. The omitted requirement that should have been included is that the Landscape Documentation Package must include the "project information" as described in section 492.3, subdivision (a)(1).

The Paragraph incorrectly represents section 492.1. That section states that a local agency shall take five actions prior to construction. The Paragraph identifies only two of those actions, one of which the Paragraph mischaracterizes. The Paragraph indicates that the local agency must approve the Package, which is not correct because, as stated in subdivision (a)(3), the local agency must "approve or deny" the Landscape Documentation Package.

The Paragraph also mischaracterizes the requirements of section 492.7 in its claim that the landscaping irrigation system "are designed to ensure compliance with the lot's individual MAWA allotment." Section 492.7, subdivision (K), requires that the irrigation system meet, at a minimum, "the irrigation efficiency criteria as described in Section 492.4 regarding the Maximum Water Allowance," not the "individual MAWA allotment." The DREIR does not mention of any steps to ensure compliance with an "individual MAWA allotment."

What does the DREIR mean by the "individual MAWA allotment"? The MPWMD estimates water use under the MAWA methodology, but it is not an "allotment" that is enforceable. Is the County intended to enforce the property's exterior water use to stay within MAWA figure used by the MPWMD to issue a permit? If so, how should the

County enforce it? If not, the DREIR should investigate the potential impacts of the lots' exceeding their MPWMD MAWA estimates.

The Paragraph erroneously claims that the plans must be signed by an "irrigation consultant . . . or other applicable landscape professional." Section 492.7, subdivision (F)(b)(7), requires the signature of a "licensed landscape architect, certified irrigation designer, licensed landscape contractor, or any other person authorized to design an irrigation system." Nowhere does the statute refer to a "irrigation consultant" or "other applicable landscape professional."

After the Landscape Documentation Package process is complete and the County has approved it, there is no proof that the landscape will stay consistent with the approved plans, or that the water use will stay within an estimate. How will the County enforce landscaping on September Ranch lots in perpetuity? The County has never done that.

Condition 45 addresses September Ranch water demand. What is the difference between September Ranch's water use and water use on the property (condition 146)? It appears that system losses are not included in "water use on the property." Please clarify.

As can be seen from the many critical questions that the DREIR leaves unanswered, the County's unwillingness and inability to enforce the water cap renders the EIR analysis meaningless.

THE PROPOSED CONDITIONS ARE UNENFORCEABLE, UNRELIABLE, AND INEFFECTIVE AS CEQA MITIGATIONS.

The EIR should quantify and present the information about the unprecedented reductions in County budgets and code enforcement personnel over the past few years. Under CEQA, the effectiveness of mitigations that require contributions to a program fund must be analyzed for the effectiveness of the program. Similarly, the EIR cannot rely on enforcement by the County without an analysis of the effectiveness of those enforcement programs. Reductions in funding and staff have a direct impact on the County's ability to enforce the conditions it places on land use approvals.

Further, the multiple reorganizations of the planning and building department – and the shuttling of code enforcement responsibility, either in part or in whole, back and forth between various departments over the past several years – means that the enforcement of any conditions, and the understanding by future staff of the importance of complying with the specific mandates of each condition, is highly questionable. This is not a case where the County has a good record of enforcing conditions. The County's own files show a pattern and practice of failing to enforce key EIR conclusions

and assumptions, as well as failing to enforce conditions of approval. As one example, the Moro Cojo subdivision approvals were premised on the 100% affordability of the project in perpetuity – but the County failed to impose conditions of approval that effectively enforced that affordability in perpetuity, and when sued by homeowners, backed off the requirement. Enforcing a single condition on a single subdivision some 7 years ago is a dismal record. The EIR should address how the County will enforce these September Ranch conditions in an effective, thorough, and accountable way.

The hallmark of the County Code Enforcement Ordinance is the County's discretionary authority to take any action. In the existing County Code, the County has no mandatory duty to bring an enforcement action under any setting. The County records show the County's track record in code enforcement. As one example, in recent years the County randomly closed hundreds of unresolved code enforcement files, apparently to reduce the amount of work it had to do. The matters were not resolved before the files were closed. It appeared that the County simply felt overwhelmed by the amount of code enforcement files it had, and closed the files to reduce its workload.

The EIR preparer should investigate and disclose the County's code enforcement funding, staffing, and the number of open files, and the time each file takes to resolve. These categories of information should be provided for the current day, as well as for the last ten years. That information will better show that County's ability to enforce water limits at September Ranch.

The County's claims about its code enforcement process are inaccurate, based on County records. In many instances, the County does not record a notice of code violation against a property, even where a violation exists. Or the County may record the notice against the wrong property (see, e.g., Carlsen Estates). Or the County may eventually record a notice of violation against the correct property, but then authorize the removal of the recorded notice of violation for no apparent reason, and while the code violation remains unresolved (see, e.g., Carlsen Estates [two 50,000 gallon water tanks constructed without permits; open County code enforcement file since March 1999; County removed recorded notice of code violation in order to remove an obstacle to County approval of a subdivision application for the site]).

Further, where the County inspector does not find a code violation, the files are closed to the public (the County considers them not to be public records), and the public has no way of knowing what, if any, investigation was performed and on what basis no violation was found. In those cases, the Code does not provide an appeal process for the public to follow. That process would make it impossible for the public to hold September Ranch parcels accountable, because the County's discretionary determinations would be secret.

The DREIR discussion at the bottom of page 34 and top of page 35 is misleading. A discretionary determination by the Board "as to whether [the] water supply is adequate for that phase", is not relevant. Water supply is a different issue from the determination of whether the water cap has been or will be exceeded. Does the Board have the discretion to determine that the 57.21 AFY water estimate has been exceeded? Under what authority?

The Board may not deny the final map unless the County requires it as a binding condition at this stage. If there is no binding condition now, can the Board deny the final map? Please provide the authority and supporting references for your response.

The EIR should propose a binding mitigation giving the County the authority and mandatory duty to review quarterly water use reports at any point and to deny the final map for any phase of the project if the project's water demand is exceeding the estimates on which the MPWMD water permits were based.

Does the Board have the authority to increase the "water supply"? Does the Board have the authority to determine that the water situation is adequate, even where the actual water use shows that the 57.21 AFY is or will be exceeded?

Even if the County does not have discretion to authorize the September Ranch project to exceed the 57.21 AFY estimate, the County could choose not to act affirmatively to keep the water demand at or below that 57.21 AFY. In that way, the County would allow the project to exceed the estimate without directly authorizing it to do so. Under the County's discretion, that is a foreseeable scenario.

Further, the county's process for approving conditions of approval is haphazard at best, and in many cases undocumented and unreliable. The County planners have informed our Office that there is no mandatory County procedure for signing off on conditions of approval. In some cases a planner signs off, in other cases a land use technician signs off. Many of the land use technicians have a high school degree, at best. They are not trained in interpreting conditions of approval, many of which are custom, highly complex, and specific to a particular subdivision due to particular issues.

We have asked to review the County's documents that document the conditions of approval. The planners have told us that there is no required procedure for that documentation. Some County staff keep a manual folder of their signing off on various approvals. We have reviewed several of those folders. Some of those folders include only the signing off, and not the documentation that should support the County's signoff. Other County staff "sign off" on conditions on the project's Permits Plus file in the County computer by putting their initials next to each condition as a "signoff." In most cases, each condition's signoff does not have associated documentation. In other words, there is no record of what, if any, reference or evidence the County staff used to sign off on each condition, or whether that staff person had adequate authority or

expertise to sign off on it. Within the past eight weeks, senior County planners have informed our Office that the County does not have policies requiring written documentation prior to land use conditions being signed off, or written paper documentation (other than initials in the computer file) of signoff by County staff. Further, the County does not have policies or procedures in place to prevent staff without adequate expertise from signing off on conditions of approval.

There is no accountability as to the County's signing off on land use conditions of approval. The public never knows about it until it is too late for the public to do anything, and at that point the public has no recourse to hold the County accountable under CEQA.

As to the claims about water system enforcement, there is no evidence that the system will be metered or that customers will be charged for their water use on a tiered structure. The County should require both (metering and tiered water rates) as mitigations. Otherwise, the project could exceed its water estimates shown in the EIR,

The DREIR's discussion of Clovis is not relevant. Clovis is very dissimilar to the proposed September Ranch subdivision. The median household in Clovis in 2007 was $59,825. The estimated home value in 2007 was $454,000. Ten percent of its residents live in poverty. In an area like Clovis, water costs make a big impact on water use. That is not true in the wealthier areas of the Peninsula, as County records show.

The top MPWMD water users, as published in the Monterey County Herald some years ago, are primarily in Pebble Beach and Carmel Valley. For property owners with significant discretionary income, paying thousands of dollars on a monthly or yearly basis is meaningless, and does not change their water use. In September Ranch, the lots will go for $1 million or more, using lots in the neighboring Tehama and Quail Meadows subdivisions as comparisons. The occupants of the market rate homes will have median household incomes in the hundreds of thousands of dollars. Under the circumstances, water costs will not make any difference on water demand.

CUMULATIVE IMPACTS

No certified environmental document supports the DREIR claim that the Rancho Canada project would result in a net decrease in water use. The Rancho Canada project Draft EIR was withdrawn by the project applicant because it was grossly inaccurate. The Rancho Canada project would not include the removal of the Rancho Canada Golf Course, as the DREIR incorrectly claims, without citation. The Rancho Canada project analysis should be corrected.

The cumulative impact analysis also fails to include all foreseeable projects, as well as other approved but not yet built out projects, including Quail Meadows (including hotel and other commercial uses), Tehama, Quintana, Carmel Valley Ranch estate lots,

Robles del Rio expansion, and the special treatment areas under the proposed GPU5 (the 2007 General Plan update).

Table 5.1 is misleading because it only identifies estimated demand, not actual demand. Where actual demand is not available, the MPWMD water permits would be far better estimates of actual demand than the EIR estimates. The County's EIR estimates are grossly inaccurate, as addressed elsewhere in this letter and our earlier comments to the County on this project. There is no data in the DREIR's Supporting Documents that supports any of the claims in Table 5.1 or the cumulative impacts discussion.

NEW INFORMATION FROM THE STATE WATER RESOURCES CONTROL BOARD REQUIRES RECIRCULATION OF THE DREIR.

The State Water Resources Control Board (SWRCB) Division of Water Rights did not receive a copy of the DREIR from the County. The SWRCB Division of Water Rights did not receive the DREIR until last week. As a result, it has had inadequate time to review and comment on the DREIR. That agency has authority over water rights and water use, and is particularly interested in the Carmel River and its environs.

State Water Resources Control Board Chair Tam Doduc sent a strongly worded letter to the County regarding September Ranch project during the County's past review. The County ignored that letter. On August 31, 2009 and September 8, 2009 the State sent two strongly worded letters to the County and the MPWMD regarding two other projects' impacts on the Carmel River, Carmel Valley Aquifer, and the Carmel Lagoon. The State has released a draft Cease and Desist order to Cal Am, and appears ready to adopt a final version in the near future.

The issues raised in the State's letters and the proposed Cease and Desist Order are either not addressed or inadequately addressed in the September Ranch project's draft EIR, which has not been certified by the County. These issues are significant new information that require recirculation of the entire EIR for the project.

There are many issues raised in the State's letters that are relevant to the County's September Ranch review, and the County and EIR preparer should review the letters carefully. As examples, we identify some of the relevant issues here.

In commenting on a proposed MPWMD water distribution permit for a subdivision, the State was concerned about the County's approval of homes without any considerations of size or potential water use. (September 8, 2009 letter, p. 2.) The State recognized that if the County acts in this way, then the actual water demand could far exceed the estimated use in the environmental documentation. That is what would happen with September Ranch: the County would approve homes without any considerations of size or potential water use.

The State is also concerned about the MPWMD's ability to enforce a production limit for a water distribution system. (September 8, 2009 letter, p. 3.) The State addresses its concerns in detail. That is what would happen with September Ranch: the MPWMD would have difficulty enforcing a maximum water use limit, and the County would have no mandatory duty to enforce a limit.

The State is also concerned about the public agency's permitting or otherwise allowing additional diversions from the Carmel River as inconsistent with the public trust doctrine. (September 8, 2009 letter, p. 4.) The County is an agency responsible for the public trust resources in the Carmel River. The September Ranch project would remove water that currently contributes to the Carmel River and the Carmel Valley aquifer.

This project's impacts would cause the River to go dry farther upstream than currently, as shown by the uncontradicted evidence of Dr. Hubert Morel-Seytoux. Allowing that action would be inconsistent with the public trust doctrine, as the State has pointed out.

The State also stated that the findings of significance identified in its letter "are applicable to any and all projects with a water supply component within the Cal Am water service area within the . . . Carmel Valley . . . or individual projects within the Carmel Valley not within the Cal-Am service area." (September 8, 2009 letter, p. 6.)

The County has stated in the past that the September Ranch subdivision would use Cal Am water for fire suppression. If so, then the subdivision would increase demand on Cal Am system by over 2.5 AFY. Condition 59 of the County's past approvals required fire suppression water which "shall be in addition to the domestic demand and shall be permanently and immediately available": 22 inclusionary units at a minimum of 4900 gallons each, 73 market rate units at a minimum of 5800 gallons each, and in some cases, more could be required. This additional amount – over 2.5 AF – is directly contradictory to the State's positions as stated in the past by SWRCB Board Chair Tam Doduc, and on August 31, 2009 and September 8, 2009 in comment letters to the MPWMD and County.

If the September Ranch subdivision would not use Cal Am water for fire suppression, then the water for fire suppression would come from the September Ranch system, and it has not been accounted for in this DREIR. This DREIR admits that Condition of Approval 40 prohibit September Ranch from being served by Cal-Am. (See p. 26, fn. 37.) Please explain why the DREIR water production totals do not include water for fire suppression. Otherwise, the DREIR should require the September Ranch project to be de-annexed from Cal Am's service boundaries as a mitigation.

The fire suppression system should have its own water meter, for accountability.

Each use at the subdivision – including the equestrian center, and the barns – should have a separate water meter. There is no water estimated in the EIR for the guardhouse at the gate. If there is to be a guardhouse, this water should be included.

SUMMARY

For all these reasons, the EIR discussion of all water impacts must be revised and recirculated for public comment.

On behalf of the Sierra Club, thank you for the opportunity to comment on the most recent environmental documents for the September Ranch project.

Very truly yours,

Michael W. Stamp

Molly Erickson

Attachments:

A. Kennedy Jenks Technical Memorandum No. 6, Revision No. 3, dated 11 July 2006 (excerpts)
B. Macomber Estates – before and after photo
C. County Water Resources Agency staff Tom Moss email to County planner Laura Lawrence, dated July 10, 2006
D. MPWMD water permits -- 5/03/06 to 8/22/06
E. City Data 2007 statistics on Clovis, California
F. State Water Resources Control Board's Water Quality Control Board letter to MPWMD, dated September 8, 2009

Kennedy/Jenks Consultants

11 July 2006

Technical Memorandum No. 6, Revision No. 3

To: Jennifer Harder and Scott Shapiro (DB)

From: Sachi Itagaki (K/J)

Cc: Jason Brandman (MBA)

Subject: Potential Cumulative Impacts to Carmel River Flow as a Result of the September Ranch Project and Other Planned Projects in the Carmel Valley

1. Background and Introduction

This memorandum is prepared as a follow-on to Kennedy/Jenks Consultants' (Kennedy/Jenks) preliminary assessment of possible reduction of groundwater recharge into the Carmel River as a result of the September Ranch Project demand. The assessment is done in response to public comments on the Hydrology section of the Revised EIR. The following summary of results are to supplement Kennedy/Jenks' Project Specific Hydrogeologic Report – September Ranch Project, Carmel, California issued as final on 23 December 2004 and revised in February 2006 (Revised Report). The revised report includes a discussion of the potential monthly impacts to the Carmel River as a result of the September Ranch project.

The discussion that follows in Section 3 below adapts the evaluation of potential monthly impacts to the Carmel River from only the September Ranch project and includes the impact of projects that had been identified prior to the issuance of the Notice of Preparation (NOP) for the Revised Draft Environmental Impact Report (RDEIR) for the September Ranch Project on 31 January 2003. An original cumulative impacts analysis was done in February 2006. This revised analysis is done to reflect changes in future development as identified by the Monterey County Planning Department as well as adding a WY 2001 normal water year analysis, in addition to WY 1996 in response to comments from MPWMD.

2. Summary of Analysis for Potential Impacts from only September Ranch

A detailed discussion of the Monthly Analysis of Potential Flow Reduction to Carmel River is included in the Revised Report and in Technical Memorandum No. 5. A summary is provided below.

EXHIBIT A p 1 of 3

3. Analysis for Potential Cumulative Impacts from September Ranch and Other Proposed Projects

In order to evaluate the potential cumulative impacts of September Ranch and other proposed projects, the following method was used:

- Evaluate water demand requirements of additional projects as provided by Monterey County
- Evaluate pumping requirements on the CVA as a result of the additional projects
- Estimate Maximum Potential Impact by summing difference between spillover with and without September Ranch (i.e. maximum decrease in potential spillover with September Ranch from the SRA to the CVA) and with pumping requirements of additional projects
- Evaluate impacts to the Carmel River

Each step is described below.

3.a Water Demands for Proposed Projects

Monterey County Planning provided a list of projects in the Carmel Valley Master Plan Study Area that were under consideration by the County at the time of the issuance of the NOP for September Ranch. Although the location for each of these projects is not precisely located on a map, to be conservative. it is assumed that they all would require water from Subunit 3 of the CVA. For some cases, water demand estimates were provided; for those projects where water demand estimates were not provided, the fixture count method provided by Monterey Peninsula Water Management District (MPWMD) to estimate water use and connection fees were used. The fixture count method includes a factor of 1.5 to adapt indoor water demands from water using fixtures to include water for landscape.

The Monterey County Planning indicated that there are 14 single family dwellings (SFD) at Quail Meadows that remain to be developed. MPWMD provided a list of water permits issued in Quail Meadows that included water allocated to each assessor's parcel number (APN) and the use (new SFD, pool, caretaker, fixtures etc.) as shown in Appendix A. An average demand per APN of 0.726 AFY for the combined uses of new SFD and other uses associated with the APN was calculated. This AFY/APN was then multiplied by the 14 available building sites for a total of 10.2 AFY. The 6 AFY of water demand associated with the conference center that will be constructed is added to the demand for the SFD for a total Quail Meadows estimated demand of 16.2 AFY.

A summary of the projects, the number of units proposed, and the estimated water demand are provided in Table 2 below.

EXHIBIT A p. 2 of 3

84 Quail Meadows permits

Appendix A

Permits Issued in Quail Meadows per UPWMD, June 2006

	Permit No.	Property Address	APN	USE	AF	APN SUM
1	15176	Quail Meadows Place	157-171-007	Generator	0.100	
2	22536	6452 Quail Meadows Drive	157-171-001	Caretaker	0.057	
3	22537	6452 Quail Meadows Drive	157-171-001	Fixtures	0.030	
4	22537	6452 Quail Meadows Drive	157-171-001	New SFD	0.739	0.826
5	15183	6454 Quail Meadows Drive	157-171-002	Bar Sink	0.010	
6	15183	6454 Quail Meadows Drive	157-171-002	New SFD	0.332	
7	15540	6454 Quail Meadows Drive	157-171-002	Pool	0.060	0.392
8	15429	6455 Quail Meadow Drive	157-171-003	New SFD	0.624	
9	16233	6455 Quail Meadow Drive	157-171-003	Pool/Spa	0.082	0.706
10	16270	6464 Quail Way	157-171-005	Caretaker	0.261	
11	16271	6464 Quail Way	157-171-005	New SFD	0.608	0.869
12	17429	6465 Quail Meadows Drive	157-171-006	Restroom	0.047	
13	23597	6469 Quail Way	157-171-007	Hwy	0.089	
14	15589	6475 Quail Meadow Drive	157-171-008	Caretaker	0.057	
15	16219	6475 Quail Way	157-171-008	Bathroom	0.047	
16	15672	6484 Quail Way	157-171-008	New SFD	0.744	
17	16349	6485 Quail Way	157-171-005	Pool/Spa	0.080	0.936
18	15647	6485 Quail Way	157-171-009	Fruit Trees	0.009	
19	15647	6485 Quail Way	157-171-009	New SFD	0.626	0.635
20	16264	6472 Quail Way	157-171-010	Pool	0.088	
21	19492	6472 Quail Way	157-171-011	Fixtures	0.010	
22	14502	6472 Quail Way	157-171-011	New SFD	0.788	
23	14502	6472 Quail Way	157-171-011	Pool	0.104	0.902
24	14231	6476 Quail Meadow Drive	157-171-013	New SFD	0.648	
25	15170	6776 Quail Meadow Drive	157-171-013	Fountain	0.020	
26	15510	6776 Quail Meadow Drive	157-171-013	Pool	0.070	0.738
27	16355	6476 Quail Meadows Drive	157-171-014	Caretaker	0.107	
28	19066	6476 Quail Meadows Drive	157-171-014	Guest House	0.224	
29	15435	6476 Quail Meadows Drive	157-171-014	New SFD	0.810	0.901
30	14499	6486 Quail Meadow Drive	157-171-015	New SFD	0.548	0.548
31	17641	6492 Quail Meadows Drive	157-171-016	New SFD	0.732	0.732
32	15716	6494 Quail Meadows Drive	157-171-018	Caretaker	0.057	
33	15715	6494 Quail Meadows Drive	157-171-018	New SFD	0.564	0.620
34	17037	6495 Quail Meadows	157-171-019	Fixtures	0.040	
35	17037	6495 Quail Meadows	157-171-019	New SFD	0.492	0.532
36	17516	6490 Quail Meadows Drive	157-171-020	New SFD	0.470	0.470
37	20155	6494 Quail Meadows Drive	157-171-021	Caretaker	0.057	
38	20154	6494 Quail Meadows Drive	157-171-021	New SFD	0.478	0.535
39	16555	6495 Quail Meadows Drive	157-171-022	New SFD	0.475	0.475
40	17077	6459 Oak Trail	157-171-028	New SFD	0.669	
41	15066	6459 Oak Trail	157-171-029	Pool	0.080	0.749
42	15505	6491 Oak Trail	157-171-030	Caretaker	0.057	
43	15505	6491 Oak Trail	157-171-030	New SFD	0.466	0.523
44	15594	6493 Oak Trail	157-171-031	New SFD	0.599	
45	15013	6493 Oak Trail	157-171-031	Studio	0.261	0.859
46	23153	6479 Covey Court	157-171-032	Exercise Room	0.057	
47	21810	6479 Covey Court	157-171-032	Guest House	0.057	
48	15815	6479 Covey Court	157-171-032	New SFD	1.846	
49	19864	6479 Covey Court	157-171-032	Pool/Pavilion	0.174	2.193
50	21315	6477 Covey Court	157-171-033	Fixtures	0.057	
51	15170	6475 Covey Court	157-171-034	New SFD	0.415	0.472
52	14506	6455 Quail Meadow Drive	157-171-039	New SFD	0.663	0.663
53	21418	6443 Quail Meadows Drive	157-171-040	New SFD	0.822	0.822
54	22625	6441 Quail Meadows Drive	157-171-041	New SFD	1.026	1.026
55	23537	6451 Quail Meadows Drive	157-171-041	New SFD	0.822	0.822
56	13952	6458 Quail Meadows Drive	157-171-042	New SFD	0.306	
57	13950	6458 Quail Meadows Drive	157-171-042	Upgrade Tub	0.010	0.316
58	17726	6455 Quail Meadows Drive	157-171-044	New SFD	0.659	
59	15495	6455 Quail Meadows Drive	157-171-044	Pool	0.065	0.724
60	15922	6453 Quail Meadow Drive	157-171-045	New SFD	0.317	0.317
61	15534	6449 Quail Way	157-171-047	New SFD	0.426	0.426
62	22611	6447 Quail Way	157-171-048	Caretaker	0.116	
63	23670	6447 Quail Way	157-171-048	New SFD	0.701	
64	21033	6447 Quail Way	157-171-048	Pool	0.092	0.909
65	17903	6459 Quail Way	157-171-049	Restroom	0.027	
66	17903	6459 Quail Way	157-171-049	New SFD	0.668	0.695
67	13743	6445 Quail Meadows Drive	157-171-050	New SFD	0.874	0.874
68	13914	6443 Quail Way	157-171-051	New SFD	0.927	0.927
69	16542	6457 Quail Meadow Drive	157-171-053	New SFD	0.287	1.243
70	19924	6500 Quail Meadows Drive	157-171-055	New SFD	0.718	
71	21939	6500 Quail Meadows Drive	157-171-055	Pool	0.073	0.790
72	14209	1 Grey Goose Gulch	157-171-056	Condo	0.191	
73	14211	2 Grey Goose Gulch	157-171-057	Condo	0.191	
74	14212	3 Grey Goose Gulch	157-171-058	Condo	0.191	
75	14213	4 Grey Goose Gulch	157-171-059	Condo	0.191	
76	14214	6 Grey Goose Gulch	157-171-060	Condo	0.191	
77	14215	6 Grey Goose Gulch	157-171-061	Condo	0.191	
78	14216	7 Grey Goose Gulch	157-171-062	Condo	0.191	
79	14217	8 Grey Goose Gulch	157-171-063	Condo	0.191	
80	14218	9 Grey Goose Gulch	157-171-064	Condo	0.191	
81	15545	6453 Covey Court	157-171-071	Caretaker	0.057	
82	15544	6453 Covey Court	157-171-071	New SFD	0.421	0.478
83	16269	6473 Quail Meadows Drive	157-171-074	New SFD	0.518	0.518
84	23126	6462 Quail Meadows Drive	157-171-075	New SFD	1.668	1.668

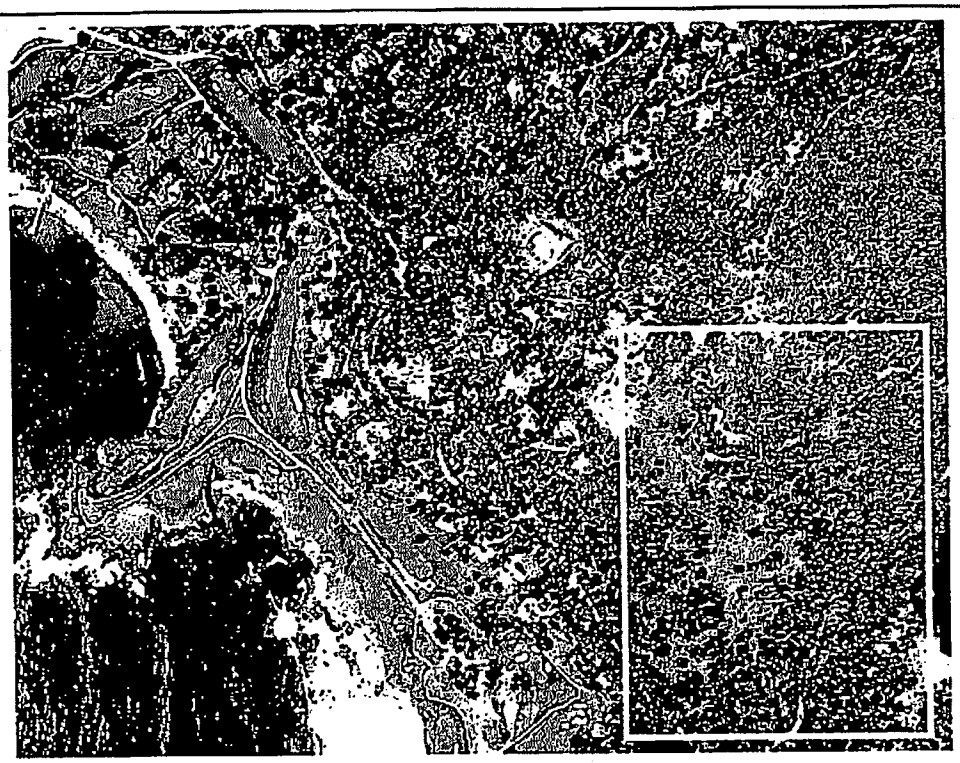
29,328 Total Acre Feet Permitted
24,422 Total AF Permitted to New SFD only
27,171 Total AF Permitted to all New SFD & other related uses
0.325 New SFD plus other related use - Average AF Permitted/Lot
2.193 New SFD plus other related use - Maximum AF Permitted per Lot
0.316 New SFD plus other related use - Minimum AF Permitted per Lot

(4 + 4) Empty lots remaining to be developed (per MPWMD)
10.158 Est AF for total lots remaining to be developed based on Average AF permitted
6 AF Demand for Conference Center
10.158 Total AF Quail Meadows demand

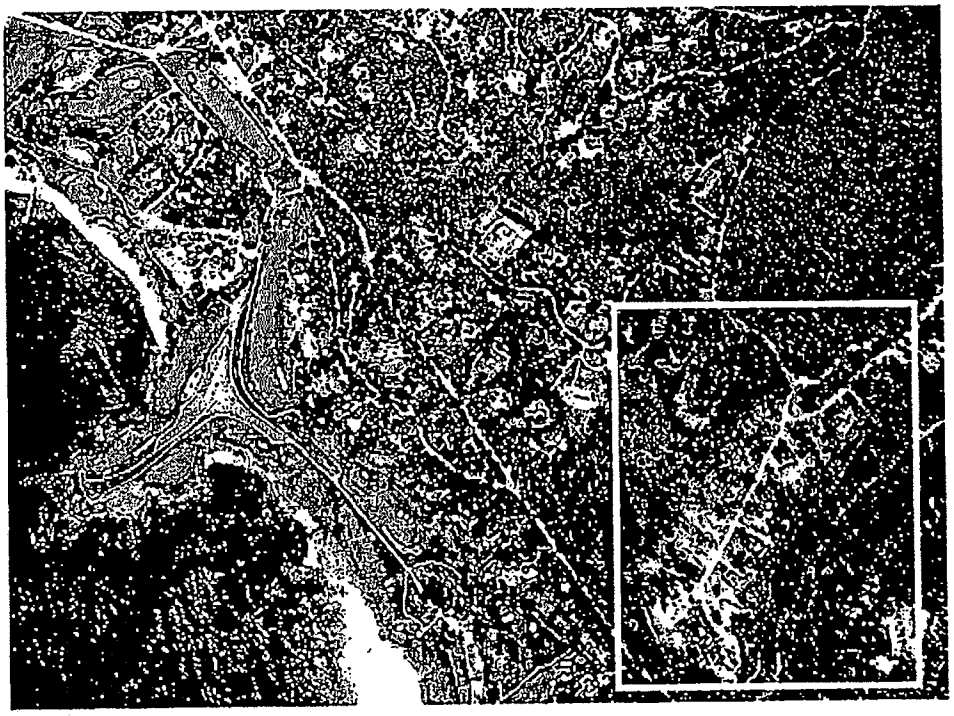
EXHIBIT A, p. 3 of 3

Aerial Photo Time Series - Macomber Estates

Del Monte Forest Planning Area



Before Subdivision - 1993 Aerial Photo



After subdivision and development of homes – 2001 Aerial photo

CALIFORNIA COASTAL COMMISSION
Regional Cumulative Assessment Project

Data Source: California Coastal Commission
Aerial Photos dated 1993 and 2001.

Map Note: Locations approximate. For illustrative purposes only. Attempts have been made to ensure completeness of the data; nonetheless, inaccuracies may exist.

EXHIBIT B

Moss, Tom Ext.4968

From: Moss, Tom Ext.4968.
Sent: Monday, July 10, 2006 12:43 PM
To: Lawrence, Laura x5148
Subject: RE: September Ranch

Laura-

I understand the lots will be formed long before we know what will be built on them; however, your previous condition included th following requirement: Prior to each phase, the applicant shall submit a plan, demonstrating how fixture units shall be allocated, the Director of Planning for review and approval. This is not a standard Water Resources Agency requirement; however, we trie to include your wishes within the established protocol. It was my understanding that P&BI wanted to give the developer flexibili rather than limiting water use on each lot. System losses are not related to allocation. They are not included on the Water Relea Form (WRF); therefore, they were included in our recommend condition.

I can imagine an infinite number of scenarios related to the timing of final maps and water use reports; therefore, I don't believe the 95% cap and three month reporting period is an effective way of ensuring that lots are not created that cannont be built upon. On a monthly basis, the MPWMD tracks permitted water "allocation" and water usage vs. total entitlement for each water distribution system within their jurisdiction. MPWMD staff frequently make changes to "authorized" WRFs; therefore, MCWR/ does not have the capability of tracking water allocation vs. entitlement. Due to the MPWMD changes to the authorized WRFs, water allocation does not equal permitted water. As a result, the County is only made aware that permitted water or total water use has reached the system entitlement when an applicant is denied a water permit by MPWMD.

If the Planning Department wishes to control water use and limit the possibility of creating unbuildable lots, I would recommend that each lot be limited to an average total fixture unit count based upon MPWMDs WRF. In this scenario, each lot will have a predefined amount of water for development. There is still the possibility that actual water use could exceed allocation. In this event, there is the potential that some lots will become unbuildable. We will have to coordinate with MPWMD to ensure water permits aren't issued that exceed the County allocation.

I believe my comments above address the problems with your proposed condition no PBDSP003. With regard to PBDSP012, th reference to fixture units in inappropriate. Fixture units are multiplied by the fixture unit value and added to the landscaping calculation to arrive at the total proposed fixture unit count. As we have discussed previously, lots over 10,000 square feet are required to submit a landscaping "water budget" to MPWMD for approval. Limiting landscaping to a maximum square footage i not appropriate because the water budget is not based solely on square footage.

Let me know if you have any questions.

Tom

—Original Message—
From: Lawrence, Laura x5148
Sent: Monday, July 10, 2006 10:25 AM
To: Moss, Tom Ext.4968
Cc: Knaster, Alana x5322
Subject: RE: September Ranch

Tom:

There are a couple of things that may not be feasible with your changes. First, because the homes will be custom on each lot, except for the inclusionary, it will be impossible to estimate the water use for each lot prior to filing the final map with each phase. The lots will be created long before we know what will be built on them. The allocation needs to include system losses as well. This was left out of your version.

EXHIBIT C

MPWMD Water Permits 5/03/05-8/22/06

Monterra Water Co. – Monterra

Address	Issue Date	Acre-Feet of water
7571 Paseo Vista	05/31/06	0.599
7595 Paseo Vista Drive	06/20/06	0.797
7591 Paseo Vista	08/22/06	0.777
7583 Paseo Vista	02/24/06	0.636
7579 Paseo Vista	01/26/06	0.961
7575 Paseo Vista	09/26/05	0.990
8175 Carina	10/14/05	0.747
7533 Canada Vista Way	08/30/05	0.473
Lot 8 Tehama	08/09/05	1.465
7635 Mills Road (Canada Woods Water Co.)	02/10/06	0.539
25820 Via Malpaso (Canada Woods Water Co.)	05/03/05	1.130

Cal-Am Water Co. – Quail Meadows

Address	Issue Date	Acre-Feet of water
5469 Quail Meadows	09/14/05	1.686
5452 Quail Meadows Drive	06/10/05	0.739
5460 Quail Way	01/06/06	0.689
5481 Covey Court	06/15/06	0.750
5441 Quail Meadows Drive	05/17/05	1.025

EXHIBIT D

Estimated median household income in 2007: $59,825 (it was $42,283 in 2000)
Clovis: $59,825
California: $59,948

Estimated per capita income in 2007: $26,143
Clovis: $26,143
California: $28,678

Estimated median house or condo value in 2007: $354,500 (it was $122,100 in 2000)
Clovis: $354,500
California: $532,300

Median gross rent in 2007: $902.
Percentage of residents living in poverty in 2007: 10.0%

EXHIBIT 12

California Regional Water Quality Control Board
Central Coast Region

Linda S. Adams
Secretary for Environmental Protection

Internet Address: http://www.waterboards.ca.gov/centralcoast
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401
Phone (805) 549-3147 • FAX (805) 543-0397

Arnold Schwarzenegger
Governor

September 8, 2009

Monterey Peninsula Water Management District
Attn: Henrietta Stern, Project Manager
5 Harris Court, Bldg. G
P.O. Box 85
Monterey, CA 93942-0085

Dear Ms. Stern:

RESPONSE TO INITIAL STUDY AND NOTICE OF INTENT TO ADOPT MITIGATED NEGATIVE DECLARATION FOR APPLICATION TO AMEND RANCHO DEL ROBLEDO WATER DISTRIBUTION SYSTEM, ESQUILINE ROAD AREA, CARMEL VALLEY, MONTEREY COUNTY – APPLICATION #20090709RAN

Central Coast Regional Water Quality Control Board (Water Board) staff reviewed the August 5, 2009, Notice of Intent to Adopt Mitigated Negative Declaration and Initial Study prepared by the Monterey Peninsula Water Management District (District) for the Rancho del Robledo Water Distribution System. The project consists of the amendment of an existing Water Distribution System (WDS) serving nine parcels via a well within the Carmel Valley Alluvial Aquifer located on an additional parcel adjacent to the Carmel River. In its existing configuration, the WDS provides irrigation water supply for the nine parcels and domestic/potable water supply for two of the parcels. Potable water service is provided to the other five existing homes within the WDS by California American Water Company (Cal-Am). The project proposes annexing an additional parcel into the WDS to provide irrigation and potable service for a potential new home and providing potable service for a potential new home on an existing WDS parcel that currently only receives water for irrigation. The District is allocating 0.5 acre-feet/year (afy) for each of the two new homes (1.0 afy total). The initial study also includes an additional allocation of 1.25 afy for [equestrian] pasture irrigation on an existing seven-acre WDS parcel (-003) that has not received irrigation water from the WDS for an unspecified time.

The District is justifying the additional water allocations of 2.25 afy based on water diversion offsets realized due to repairs to the aging WDS resulting in the elimination of an estimated 2.42 afy of wasteful system losses (leakage). According to the Initial Study an additional 1.98 afy of system losses still exists. The District is also indirectly using an estimated 0.19 afy of reduced Cal-Am potable supply usage by the existing residences over the past eight years in support of the new allocations.

Based on an estimated annual average WDS production of 14.74 afy for the past five years, the District is proposing an "enforceable production limit" of 14.57 afy (14.74 – 2.42 + 2.25) as a condition of the emended WDS permit. Production limits do not

EXHIBIT F

currently exist for the WDS which has been in operation since about 1939. The Initial Study also indicates the amended WDS "permit conditions will require continued identification and repair of leaks, as feasible." Based on the District's estimates the amended WDS permit will result in a net reduction in diversions from the Carmel River of 0.17 afy.

We are providing comments on this CEQA document as a responsible agency primarily based on our expertise and concerns regarding the beneficial uses of the Carmel River and Carmel River Lagoon. Although beneficial uses of the Carmel River and Carmel River Lagoon may be impaired by the proposed project, we do not have authority over the water supply issues causing the impairments and have no approval oversight of the project outside of our authority governing waste discharges from the proposed project.

The Mitigated Negative Declaration and Initial Study fail to provide sufficient mitigation to address significant cumulative offsite environmental impacts to the riparian and aquatic habitats of Carmel River and Carmel River Lagoon, and to the federally listed steelhead and California red-legged frogs that are dependent on these habitats for their survival.

Although the District provides a short and informed discussion of the well-documented[1] cumulative impacts water diversions from the Carmel River are having on the public trust resources within the Initial Study, we disagree with the "less than significant impact" and "no impact" determinations made within portions the environmental checklist. This is particularly true within the Biological Resources section of the checklist. These determinations appear to be primarily based on the mitigation realized by the estimated permanent reduction in the WDS diversion from the Carmel River of 0.17 afy. This is only 7% of the realized WDS offsets due to the elimination of wasteful system losses while the remaining 93% (2.25 afy) is being handed back to the project applicant by the District for new development. Additional wasteful losses, not including the remaining estimated 1.98 afy of losses, and variability in the District's estimates used to evaluate this project will likely negate the estimated water diversion reduction of 0.17 afy. The estimated reduction of 0.17 afy is well within the range of the future leakage rate of 13.6% estimated by the District within the Initial Study for the 2.25 afy additional allocation (0.17/2.25 = 7.6%). This is also within the standard range of distribution systems losses of 10%.

The actual water usage for the two potential homes is uncertain given the homes have yet to be proposed and will likely be approved by the County without any consideration of size or potential water use. The allowable water use for any new home or project within the District's boundaries should be based on Rule 24 – Calculation of Water Use Capacity and Connection Charges within the District's Regulation II for Permits and not a seemingly arbitrary allotment of 0.5 afy per residence. Section A of Rule 24 states,

[1] Monterey Peninsula Water Management District April 1990, Water Allocation Program Final Environmental Impact Report and subsequent Mitigation Program Annual Reports; State Water Resources Control Board July 6, 1995, Order No. WR 95-10; State Water Resources Control Board July 27, 2009, Draft Cease and Desist Order against California American Water Company; National Marine Fisheries Service June 3, 2002, report on Instream Flow needs for Steelhead in the Carmel River.

"Residential Water Use Capacity shall be calculated using a fixture unit methodology whereby each water fixture is assigned a fixture unit value that corresponds to its approximate annual Water Use Capacity". Based on our review of the provided CEQA document, the District does not appear to have applied the methodology contained within its own regulations to the proposed project.

In addition, the District appears to provide mitigation measures in support of the project based on yet to be realized projects by others, namely the District, Cal-Am and the City of Seaside, that would significantly reduce diversions from the Carmel River over time. Although these pending and potential projects are significant in the cumulative context with regard to Cal-Am's ongoing excess diversions from the Carmel River, they should not be used to support individual and unrelated projects such as the one in question. All projects should be evaluated on their relative contribution to (or mitigation of) the cumulative impacts on the public trust resources and beneficial uses of the Carmel River and Carmel River Lagoon.

We question the District's ability to effectively enforce the new production limit proposed as a condition of the amended WDS permit. It is assumed that the District's enforcement authority is primarily based on Rule 20.4 – Permit Rule Noncompliance contained within Regulation II and Rule 40 – Determination of System Capacity and Expansion Capacity Limits within Regulation IV. Based on our cursory review of these rules, the District's enforcement powers appear to be limited to the WDS manager's ability to control the water use of multiple property owners and the District's powers to record Notices of Non-Compliance against all property owners within the WDS. It is unclear what effect these notices will have on individual water user's within the WDS given Rule 20.4 only appears to allow the District to record a lien against individual properties receiving water from an unpermitted WDS to recover enforcement related costs. It is assumed that the Rancho del Robledo WDS will be a permitted WDS upon approval of this project.

Although approval of the proposed project may not add significantly to the well-documented significant, cumulative impacts to public trust resources and beneficial uses of the Carmel River and Carmel River Lagoon, it certainly does little or nothing to reduce the ongoing impacts or provide incentives to reduce the ongoing impacts. The initial study states, "The applicant has no control over the actions of other users who divert Carmel River water." What the District appears to fail to understand or take responsibility for is that it does have control over the actions of others who divert Carmel River Water. Surely the District can do better than provide a 7% return of estimated water diversion offsets back to the Carmel River on any given project.

Permitting or otherwise allowing additional diversions from the Carmel River would be inconsistent with the public trust doctrine.

As stated in the findings of the pending draft cease and desist order against Cal-Am,[2] exempting entitlements from Cal-Am's ongoing excess diversion would be inconsistent

[2] State Water Resources Control Board July 27, 2009, Draft Cease and Desist Order against California American Water Company

with Cal-Am's duty to protect public trust resources given the well-documented significant cumulative impacts on the public trust resources of the Carmel River and Carmel River Lagoon associated with Cal-Am's ongoing excess diversion of water from the river. To be certain, this determination is applicable to any public agency with the power to approve water supply-related projects given no party can obtain a vested right to appropriate water in a manner harmful to the uses protected by the public trust doctrine. Consequently, allowing increased dewatering of the Carmel River for new growth is incompatible with the District's affirmative duty as the lead CEQA agency to protect the public trust.

The ongoing excess diversion of water from the Carmel River by Cal-Am and others resulting in significant cumulative impacts to the public trust resources of the Carmel River is currently unmitigated. Ongoing diversions by all parties will continue to have significant adverse effects on the public trust resources of the river and lagoon until alternative supplies and conservation measures are implemented to offset the ongoing diversion.

Some have argued that the well-documented impacts to the Carmel River are being mitigated by the implementation of the District's Mitigation Program[3] for the preservation of Carmel River environmental resources. We would strongly disagree with this argument because the applied mitigation measures[4] are merely band-aid approaches applied to the symptoms of the real problem—dewatering of the Carmel River due to overdrafting of the alluvial aquifer—and given the riparian and aquatic habitats of the Carmel River and Lagoon would likely be unable to sustain a viable steelhead population without them for very long unless water diversions are substantially reduced. Although appropriate while diversions are being reduced, fish rescues, rearing facilities, monitoring and ongoing habitat restoration should not be considered as viable mitigation measures in support of new projects or long-term solutions to inadequate flows within the Carmel River. This is especially pertinent since the lack of flow necessary to sustain viable riparian and aquatic habitats is primarily due to the well-documented excess diversion of water from the Carmel River by Cal-Am and others.

It could also be argued that using water offsets generated from conservation efforts for new connections or development sufficiently mitigates additional significant cumulative impacts. This argument is flawed because it ignores the real problem and provides no incentive for the communities within Monterey Peninsula and Carmel Valley to develop

[3] Developed in response to the Monterey Peninsula Water Management District April 1990, Water Allocation Program Final Environmental Impact Report. Order No. WR 95-10 requires Cal-Am to implement any portion of the Mitigation Program not implemented by the MPWMD. The MPWMD currently implements the program with funding from fees paid by Cal-Am's water customers.

[4] The Mitigation Program focuses on potential impacts related to fisheries, riparian vegetation and wildlife, and the Carmel River Lagoon and includes special status species and aesthetics. Activities required to avoid or substantially reduce negative impacts to the environment include irrigation and erosion control programs, fishery enhancement programs, establishing flow releases from the existing dams to protect the fish and riparian habitat; monitoring water quality, reducing municipal water demand, and regulating activities within the riparian corridor.

the alternative water supplies needed to mitigate the existing significant cumulative impacts to the public trust resources of the Carmel River and Lagoon as a result of overdrafting the Carmel Valley Alluvial Aquifer.

Arguably, offsets realized from correcting wasteful losses should not be used to generate additional water supplies for new growth nor be considered as conservation, especially considering the gravity of the significant cumulative impacts due to overdrafting of the Carmel River. Moreover, system losses are generally viewed as preventable "waste or unreasonable use or unreasonable method of diversion" pursuant to Water Code Section 100. We are not strictly opposed to the District or others providing incentives for conservation in the form of additional water use allocations for new growth derived from realized conservation offsets, but only if significant portions of the offsets (50% or more) are used for the permanent reduction in Carmel River diversions that result in tangible reductions in the significant cumulative impacts to the public trust resources and beneficial uses of the Carmel River and Carmel River Lagoon. However, providing any portion of conservation offsets realized within the Cal-Am water service area for new development or connections within the Cal-Am water service area should not be allowed because Cal-Am is the single largest water diverter and contributor to the significant cumulative impacts to the public trust resources and it has been under order to reduce its diversions since 1995[5].

To date, Cal-Am, the District, and Monterey Peninsula communities have apparently failed to develop an alternative water supply or implement conservation measure to substantially reduce diversions of water from the Carmel River. As evidenced by this and other projects, the latter is partly due to the fact that water diversion offsets from the Carmel River generated through conservation efforts or elimination of wasteful losses are commonly handed out for new development. No irony is lost on the fact that of the District's budgeted expenditures for fiscal year 2009-2010, 57.3% is proposed for mitigation, 25.6% is proposed for conservation and 17.1% is proposed for capital projects[6]. Many of the projects associated with these proposed expenditures are assumed to be directly related to the District's implementation of the District's Mitigation Program for the Carmel River funded by Cal-Am water customers. One would assume that shifting more funding towards the development of capital projects (for alternative water supplies) and conservation would go a long way in reducing the mid- and long-term costs associated with ongoing mitigation.

The proposed project may have a significant effect on the environment and a mitigated negative declaration is not consistent with the California Environmental Quality Act.

Findings of significance (not just potential significance) should be required for the following items within the environmental checklist:

- Biological Resources items 4.a, b, c and d.

[5] Issued to California America Water Company by the State Water Resources Control Board on July 6, 1995 for its illegal diversion of water from the Carmel River

[6] District Resolution No. 2009-07 and June 15, 2009, Budget Transmittal to the District Board

- Hydrology and Water Quality items 8.a and f.
- Land Use Planning items 9.b and c.
- Utilities and Service Systems item 16.d.

In addition, mandatory findings of significance should be required for items a. and b. within section VII. of the Initial Study.

We take specific issue with the "rationale for no impact" specified within the Biological Resources section discussion for checklist items 4.c and d given that seasonal offsite/downstream impacts within the Carmel River and Carmel River Lagoon may result from the project due to potential increases in water diversions. The District's rationale only gives credence to potential impacts immediately adjacent to the project area and appears to neglect the fact that existing water diversions have significant cumulative offsite impacts in downstream portions of the river.

Please note that these findings of significance are applicable to any and all projects with a water supply component within the Cal-Am water service area within the Monterey Peninsula, Carmel Valley and Carmel Highlands or individual projects within the Carmel Valley not within the Cal-Am service area.

All water diversions by Cal-Am and other water users within Carmel Valley contribute to the well-documented significant cumulative impacts to the public trust resources and beneficial uses of the Carmel River and Carmel River Lagoon. Consequently, all projects that are diverting water from the Carmel River, including the alluvial aquifer, should be subject to the same findings of significance regardless of their size and relative impact.

Please forward all future CEQA documents with a water supply component either within the Cal-Am water service area or areas of the Carmel Valley not within the Cal-Am water service area directly to this office and the State Water Resources Control Board Division of Water Rights at:

State Water Resources Control Board
Attn: Kathy Mrowka
Division of Water Rights
1001 I Street, 14th Floor
Sacramento, CA 95812

Please do this in addition to checking these agencies off on the "Project Sent to the Following State Agencies" list on the Notice of Completion form.

In conclusion, the District should be commended on its ongoing implementation of the Mitigation Program for the preservation of Carmel River environmental resources and participation in numerous beneficial projects within the County. However, we feel that the District's current approach to handing out substantial portions of realized water

diversion offsets for new development is in direct conflict with its responsibility to protect and restore the public trust resources and beneficial uses of the Carmel River and Carmel River Lagoon. As evidenced by this and other projects, the District appears to fall short in asserting its authority over water supply issues for individual projects that could result in cumulatively significant improvements in the protection and restoration of the public trust resources and beneficial uses of the Carmel River and Carmel River Lagoon.

If you have any questions regarding this matter, please contact **Matthew Keeling at (805) 549-3685** or mkeeling@waterboards.ca.gov, or Burton Chadwick at 805-542-4786.

Sincerely,

Roger W. Briggs
Executive Officer

Paper File:
Electronic File: S:\NPS\Carmel River & Lagoon\RdRobledo WDS.doc
Task Code: 12601

cc:

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