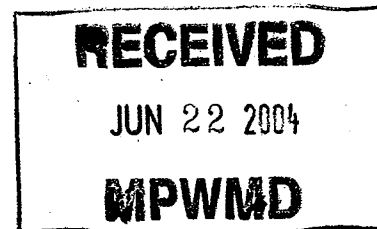


EXHIBIT 16-D



LAW OFFICES  
RICHARD H. ROSENTHAL  
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21 JUNE, 2004

MPMWD Ordinance 117

**FAX TRANSMISSION**

To: Monterey Peninsula Water Management District

Re: Notice of Intent to Adopt Negative Declaration For MPWMD Ordinance No. 117

Dear Board Members:

Please be advised that Save Our Peninsula Committee and Ed Leeper object to the Board's adoption of the above referred to Ordinance pursuant to a Negative Declaration. The Board is aware of the Settlement Agreement entered into between Save Our Peninsula and Monterey County in Case Number M51217 filed in Monterey County Superior Court that requires Monterey County to prepare an environmental impact report prior to approving any project, even a single family residence, that relies on a water saving mechanism as proof of a water supply. In essence, Monterey County has stipulated that there are environmental impacts associated with water credit transfers. Quite frankly, common sense dictates the result. The Negative Declaration's conclusions are not supported by common sense.

Therefore, Save Our Peninsula requests that the Board require an environmental impact report prior to considering the above referred to Ordinance.

If you have any questions or would further like to discuss the matter, please feel free to call.

Sincerely,

LAW OFFICES RICHARD H. ROSENTHAL  
A PROFESSIONAL CORPORATION

BY: Richard H. Rosenthal  
RICHARD H. ROSENTHAL

RHR/cd  
Cc: Michael Stamp

*Submitted at 6/21/04 MPWMD  
Board meeting by Molly Erickson*

LAW OFFICES OF  
MICHAEL W. STAMP

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June 21, 2004

Via Facsimile 644-9560

Alvin Edwards, Chair, and Members of the Board of Directors  
Monterey Peninsula Water Management District  
P.O. Box 85  
Monterey, CA 93942

Re: Negative Declaration, MPWMD Ordinance No. 117  
Re-establishing ministerial approvals of water credit transfers

Dear Chair Edwards and Board Members:

My client The Open Monterey Project strongly objects to the proposed Negative Declaration for Ordinance 117. Changing approval of transfers from discretionary to ministerial has significant unidentified environmental impacts. My client urges you to complete an Environmental Impact Report to address all the impacts.

The ordinance proposes to go back to the old process of allowing water credit transfers to be approved ministerially. That method allowed water to be "transferred" without any confirmation that the water was actually available and was not "paper water." That method caused unknown environmental impacts, including an unknown amount of additional water to be pumped from the Peninsula's limited supply. Many of the old method's failures and problems were addressed in the DCI, Inc. "Analysis of Water Savings Associated with Document Water Use Credits and Transfers" (June 1, 2001), and the internal "Water Credit Program Analysis" staff memo from Stephanie Pintar (September 12, 2000). These two studies alone are substantial evidence to support a fair argument that the project may cause a significant effect on the environment. The cover pages of the DCI and Pintar reports are attached here.

The proposed ordinance is fundamentally flawed because it deletes the requirement of proof that "the transfer will not have an adverse impact on the water supply." That proof is currently required. That proof can only be provided with an Environmental Impact Report. The Initial Study does not evaluate the environmental effects of deleting that requirement.

Possible negative environmental effects include an increase of water taken from the Carmel River which is under SWRCB Order 95-10, harm to the public trust resources including the steelhead and red legged frog, and harm to the Seaside Aquifer which shows significant signs of being in overdraft.

The only possible reason for this proposed ordinance would be to make it easier for water transfers to occur. Because water transfers as a matter of law and of fact cause significant environmental impacts, Ordinance No. 117 cannot be approved on this record.

The transfer program would allow "paper water" to be moved from one location to another. The Initial Study (IS) fails to identify or analyze the impacts on the water supply. The IS ignores the lack of accurate and thorough Cal Am water consumption records and histories – which led to some of the previous problems – which cannot be corrected. Without that information, any water use data is seriously flawed.

For years, MPWMD staff has stated that the commercial water use credit factors are out of date and inaccurate. A transfer program, as here, based on those out-of-date factors has unanalyzed and unidentified environmental impacts. Further, the commercial water credit "groups" contain a variety of uses with the same factor in order to facilitate commercial changes in use. The IS does not identify the environmental impacts of using these large and flexibly-interpreted "groups."

The ordinance proposes at least 29 different requirements for water credit transfers. Despite the fewer requirements of the previous ministerially-approved water credit transfer program, staff failed to implement even those few requirements correctly, consistently or fairly. No identification or analysis of those issues has been made.

The Initial Study admits that the safeguards may fail and its estimated water use will be incorrect. It concludes that future amounts of transferred water would be similar to past amounts of transferred water, and therefore no impacts would result. There is no evidence of the amounts of water that would be involved in the proposed transfer program. The IS conclusion ignores the changed situation that most jurisdictions have exhausted their water allocations. Any potential impacts – even a single acre foot of new water consumption – must be identified in light of SWRCB Order 95-10. The Initial Study fails to identify and analyze these impacts.

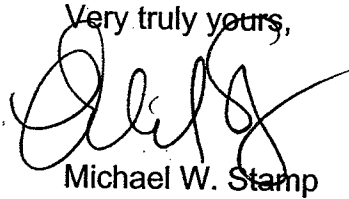
The success or failure of different commercial enterprises -- of the exact same use -- significantly impacts on their water consumption. Five years may not be sufficient time to identify or evaluate the true impacts. Further, there is no enforcement of water consumption limits. Further, the prohibition on residential use receipt of transferred water is easily avoided by the water being transferred to the jurisdiction's allocation and then allocated directly to a residential use. The IS fails to identify these impacts.

Monterey Peninsula Water Management District  
June 21, 2004  
Page 3

Several years ago, Patricia Bernardi and Save our Carmel River sued the MPWMD on a related issue and won.

Please put me on the distribution list for this ordinance and any MPWMD actions relating to the water credit transfer program.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael W. Stamp", written in a cursive style.

Michael W. Stamp

Attachments

**Analysis of Water Savings Associated  
with  
Documented Water Use  
Credits and Transfers**

Prepared for

**Monterey Peninsula  
Water Management District**

**June 1, 2001**

Prepared by

**DCI INC.**

Problems to Challenges to Opportunities

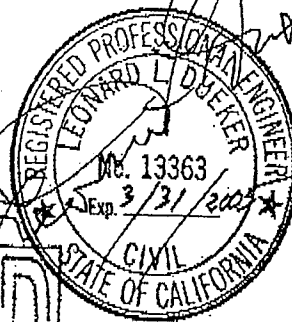
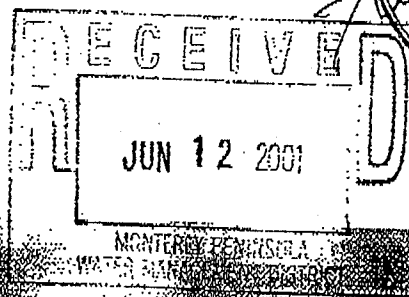
815 SOUTH ROCHESTER

MESA, AZ 85206-2749

(480) 835-9584

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**interoffice**  
**MEMORANDUM**

185

**To:** Darby Fuerst, General Manager

**From:** Stephanie Pintar, Water Demand Manager

**Date:** September 12, 2000

**Subject:** Water Credit Program Analysis

Water Demand Division (WDD) staff has spent considerable time over the past three months compiling California-American Water Company (Cal-Am) water consumption records for commercial water users who have received a documented Water Use Credits from the District under Rule 25.5. Records for all documented commercial water credits on file at the District were included in this research. However, a number of discrepancies were observed, including a lack of water consumption histories and records with Cal-Am, multiple users on one or more water meters on a site, and other variables such as water permits and business changes. Debbie Martin worked extensively with Cal-Am staff to try to fill in the water consumption gaps, but there are still several missing periods in many of the records.

Water credits have been issued using one of two methods to calculate water savings. Either regional average factors were used to estimate commercial water use, or actual water use was used to determine the credit. The use of regional or representative averages has been the "norm" recently, as all commercial water permits for new or expanded uses are issued based on these factors. The problem with analyzing the consumption information for these specific water use credits is that they are based on averages. As a result, many of the credit sites were unsuccessful businesses and therefore do not reflect the true potential of water use for a particular class of business. An example of how water use can change dramatically within the same type of use is the recent change in ownership of the former Ginza restaurant in Monterey to Benihana's. The Ginza restaurant went out of business over ten years ago. Benihana's recently opened in place of the Ginza and has had notable success in its opening months. In addition, the current three commercial water use factor "groups" contain a variety of uses with the same factor to facilitate commercial changes in use. This is particularly true in Groups I and II of the commercial factors where a variety of uses are permitted under the same factor.

It should also be noted that the regional averages used by the District are considered to be significantly out of date. The last update to the commercial water use factors was completed in June 1992. Since that time, the District has adopted numerous policies effecting commercial uses and the State of California has eliminated the sale and installation of non-ULF toilets. In addition, new technology is available to reduce commercial water use in various appliances such as cooling towers, refrigeration units, dishwashers, washing machines, etc. All of these factors could effect the appropriateness of the currently used factors and underscore the need to update the factors to provide more reliable information. Staff recommends that an update of the commercial factors