



Supplement to 1/27/16 MPWMD Board Packet

Attached are copies of letters received between December 8, 2015 and January 20, 2016. These letters are listed in the January 27, 2016 Board packet under Letters Received.

Author	Addressee	Date	Topic
Laurens H. Silver	David Stoldt	12/14/15	First Reading of Ord. No. 168 to Establish a Water Entitlement for the City of Pacific Grove
Luke Coletti	MPWMD Board	12/14/15	First Reading of Ord. No. 168 to Establish a Water Entitlement for the City of Pacific Grove
Luke Coletti	MPWMD Board	12/13/15	First Reading of Ord. No. 168 to Establish a Water Entitlement for the City of Pacific Grove
Eric Petersen	David Stoldt	12/10/15	MPWMD Permit No. 34275
Alecia Van Atta	David Stoldt	11/30/15	Development of Groundwater Sustainability Plan for Carmel Valley Groundwater Basin

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CALIFORNIA ENVIRONMENTAL LAW PROJECT

A Non-Profit Legal Corporation



Of Counsel

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December 14, 2015

VIA E-Mail dstoldt@mpwmd.dst.ca.us

David J. Stoldt
General Manager
MPWMD
5 Harris Court, Building 6
P. O. Box 85
Monterey, CA 93942-0085

Arlene@mpwmd.dst.ca.us

Re: First Reading of Ordinance No. 168 to Establish a Water Entitlement for the
City of Pacific Grove

Dear Dave:

Sierra Club hereby submits comments on this Agenda Item. Because the District has not complied with CEQA in connection with the conferral of a water entitlement to the City of Pacific Grove and a reallocation of water to the City, Sierra Club asks that the Proposed Ordinance be withdrawn until appropriate environmental documentation is performed consistent with CEQA.

David J. Stoldt
 December 14, 2015
 Page 2 of 7

I. The Vesting of an Entitlement in the City Is a Project that Requires Independent Environmental Documentation By MPWMD Pursuant to CEQA.

In *Save Our Carmel River, et al. v. MPWMD, et al.*, 141 Cal.App.4th 677, 46 Cal.Rptr.3d 387 (2006) the Court held:

Although the Guidelines define an action as ‘the whole of an action’ (Guidelines §15378(a)), an agency action qualifies as a project if it is ‘necessary to the carrying out of some private project involving a physical change in environment.’ (*Simi Valley Recreation and Park Dist. v. Local Agency Formation Com.* (1975)). 46 Cal.Rptr.3d at 400).

Here, the District’s decision to confer vested water to the City of Pacific Grove is a necessary step in the eventual development of new projects in Pacific Grove, including a new hotel on Cannery Row. See <http://www.montereyherald.com/20150825/american-tin-cannery-to-become-leading-luxury-hotel> and <http://www.montereyherald.com/business/20150826/pacific-grove-luxury-hotel-project-faces-hurdles-questions>.

The decision to reallocate water to the City of Monterey and confer an entitlement on the City, will have an environmental impact just as the water credit transfers discussed in the *Save Our Carmel River* case will have environmental impact, warranting appropriate environmental documentation by the MPWMD with respect to the environmental effects arising from the vesting of a water entitlement, and the reallocation of water previously allocated pursuant to the 1991 EIR. See *Save Our Peninsula Committee v. Monterey County Bd of Supervisors*, 87 Cal.App. 4th 99, at 129-131 (2001). The reallocation of water for “use” by the City of Pacific Grove and the creation of a water entitlement to be held in major part for future growth in the City “results in an increment of water that will be used rather than conserved.” 46 Cal.Rptr. 3d at 400. The District’s proposed ordinance enactment conferring a vested water entitlement on the City and significantly amending the 1991 MPWMD water allocation plan and the 1991 EIR water allocation “project” can be seen as “causing a ‘reasonably’ foreseeable indirect physical change in the environment.” *Id.* At 400-401. As a result, the District must prepare environmental documentation setting forth the environmental impacts of conferring a water entitlement on the City and augmenting the City’s allocation of water in a manner that will result in growth.

As proposed for a first reading, Ordinance No. 168 makes it clear that the

David J. Stoldt
December 14, 2015
Page 3 of 7

water entitlement is vested, unalterable, fully transferable, and not subject to reallocation:

Section 4A of the Ordinance provides:

A. CITY OF PACIFIC GROVE WATER ENTITLEMENT

1. The City of Pacific Grove Water Entitlement confers on the City of Pacific Grove, a vested property right to release up to 66 AFA of water for consumption from the California American Water Company Water Distribution System.
2. 13 AFA of metered water demand previously used by the City of Pacific Grove to irrigate its Golf Links and El Carmelo Cemetery shall be permanently suspended from use in order to provide lasting benefits to the Carmel River system.
3. Benefited Properties of the City of Pacific Grove Water Entitlement shall mean all properties that are located within the City of Pacific Grove.
4. City of Pacific Grove is authorized to separately sell, transfer and convey to owners of Benefited Properties for such consideration and upon such terms and conditions as City of Pacific Grove in its discretion may determine, such portions of the City of Pacific Grove Water Entitlement as it may choose. Any portion of the City of Pacific Grove Water Entitlement conveyed to the owner of a Benefited Property by an Assignment Document shall vest in the owner of the Benefited Property, and become appurtenant to title to the particular Benefited Property, at the time the Water Use Permit is issued as evidence of such conveyance.
5. The City of Pacific Grove Water Entitlement shall be separate and distinct from any other Allocations provided in Rule 30.
6. For purposes of collecting Capacity Fees and tracking the use of a Water Entitlement, the projected increase in Water Use Capacity of a Benefited Property shall be calculated in the manner set forth in Rule 24, as it may be amended from time to time.
7. Each Water Use Permit issued pursuant to this Rule shall

David J. Stoldt
 December 14, 2015
 Page 4 of 7

represent a vested property interest upon issuance and shall not be subject to Revocation or cancellation except as expressly set forth in subparagraph B below.

8. The portion of the City of Pacific Grove Water Entitlement granted by each Water Use Permit shall not be subject to reallocation pursuant to MPWMD Rule 30.

II. The District Is Not A Responsible Agency With Respect to the City's Recycling Project But Is a Lead Agency For The Approval Of The City's Water Entitlement And Augmentation of Its Water Allocation.

CEQA Guideline §15096 charges a Responsible Agency with "reaching its own conclusions on whether and how to approve the project involved." The City's Project is described in the DEIR as involving:

The proposed Project is the Pacific Grove Local Water Project (PGLWP). The Lead Agency is the City of Pacific Grove. The primary purpose of the Project is to produce and distribute high quality recycled water to replace potable water used for non-potable water demands such as landscaping. The Project service area is consistent with the water franchise agreement between the City and the California American Water Company (CAW).

Project Goals. In conjunction with the primary goal of replacing potable water high quality recycled water, additional key goals are:

1. To preserve available potable water supplies for domestic uses and to maximize the recycling and reuse of non-potable recycled municipal wastewater in a cost effective manner;
2. To substitute the City's use of CAW potable water with recycled water for non-potable water demands;
3. To reduce discharges to Monterey Bay and the Pacific Grove Area of Special Biological Significance (ASBS); and
4. To maximize the use of existing wastewater collection, treatment, recycling and recycled water distribution infrastructure for the development of irrigation water and other non-potable demands.

There are six primary benefits of the PGLWP:

1. The PGLWP conserves potable water for uses requiring potable water only, thereby helping to meet State requirements to conserve water and regional compliance for CAW's reduction of the use of water from the Carmel River;

David J. Stoldt
 December 14, 2015
 Page 5 of 7

2. It avoids all costs of producing an equivalent volume of potable water;
3. It requires less energy per unit of water produced, creates a smaller carbon footprint, and is otherwise resource-efficient;
4. It would provide a new supply of irrigation water, thereby reducing operational demands on Cal-Am's desalination plant and other system components;
5. By using sewage, stormwater, and dry weather flows as its sources of water, it helps achieve other State and local goals related to keeping the Pacific Grove Area of Special Biological Significance (ASBS) in particular and Monterey Bay in general, free of pollution; and
6. The LWP would be the first of four primary Projects designed to prevent illegal diversions from the Carmel River and excessive pumping from the Seaside Aquifer to come on line. It is the only project that is scheduled to be operational prior to January 1, 2017, the State's designated date for imposing the full Cease and Desist Order (CDO). As such, it would reduce illegal diversions and create other significant environmental benefits in advance of the ability of any of the other projects to do so.

The PGLWP consists of the construction and operation of a new satellite recycled water treatment plant (SRWTP) to recycle a portion of Pacific Grove's municipal wastewater, 8-inch pipeline and related appurtenances. Recycled water produced at the SRWTP, located at the retired Point Pinos Wastewater Treatment Plant (WWTP), during the first phase, would be used primarily for landscape irrigation at the Pacific Grove Golf Links and El Carmelo Cemetery, owned by the City of Pacific Grove and located adjacent to SRWTP. The initial Project consists of installing 2,800 linear feet (LF) of recycled water pipeline that would convey recycled water from the SRWTP to the Pacific Grove Golf Links and El Carmelo Cemetery's existing irrigation systems.

The proposed Project is intended to serve approximately 125-acre feet per year (AFY) of recycled water, primarily to the City of Pacific Grove Golf Links and El Carmelo Cemetery (Demand Group 1). The predominant use of recycled water would be for landscape irrigation.

(Draft EIR at S-1-S-2).

Section 15381 of the Guidelines defines a "responsible agency" as a public agency which proposes to carry out or approve a project for which a lead agency...has prepared an EIR...." The District is not carrying out or approving the Pacific Grove water recycling project. It is carrying out a water entitlement and reallocation project vesting rights in the City of Pacific Grove

David J. Stoldt
 December 14, 2015
 Page 6 of 7

The Project approved by the City is a water recycling project. The availability of water for growth as a result of the reduced use of potable water for irrigation is not a project component. This is illustrated by the absence anywhere in the DEIR, FEIR, or Supplemental FEIR of any discussion concerning the (cumulative) environmental impacts of the potable water being saved, being allocated for use for future new development projects. The DEIR section on "Growth Inducing Impacts" states only that "The proposed Project does not propose construction of any new residences and would therefore not directly induce substantial population growth." DEIR at 18-40.

Guideline 15096(d) provides also that a "responsible agency should review and comment on draft EIRs...for projects which the responsible agency would later be asked to approve." The MPWMD does not have before it a proposal to "approve" the City's recycling project. Rather, it has before it a proposal to adopt an Ordinance conferring a water entitlement on the City of Pacific Grove and amending the water allocation for the City previously approved in connection with the 1991 water allocation EIR.

Thus, for the purpose of its consideration of proposed Ordinance 168, MPWMD is not a responsible agency, but a Lead Agency, that must, in compliance with CEQA, prepare environmental documentation before approval of the Ordinance on the environmental effects of providing a water entitlement to the City of Pacific Grove that will result in substantial growth in the City arising from new or more dense development. It is not consistent with the CEQA Guidelines for the District to rely on the City's EIR and Supplemental EIR as a surrogate for environmental documentation required in connection with conferring a vested water right on the City of Pacific Grove and augmenting its water allocation by 66 afy.

III. There Are Changed Circumstances and New Information Related to the Allocation of Water To the City of Pacific Grove Under the 1991 Allocation EIR That Requires Supplemental Environmental Documentation.

The City of Pacific Grove has less than one acre foot of water remaining from the allocation made to it in the MPWMD 1991 EIR. The proposed Ordinance reallocates to the City 66 acre feet of water. This constitutes a significant increment over what remains, and constitutes a significant increment over what was allocated to the City in the 1991 EIR. This reallocation of water supply to augment the the one afy that remains to the City constitutes changed circumstances or new information requiring supplemental environmental documentation pertaining to the District's Water Allocation Planning Program, which was the subject of the 1991 Water Allocation EIR. See Public Resources Code 21166; CEQA Guidelines §15162, §15163. In effect, the allocations previously made have been significantly changed with respect to the City's allocation. The District must treat the previously approved Water Allocation for Pacific Grove, and build out under that program (with less than one acre foot remaining) as the "baseline" for determining whether the augmented water allocation to the City will cause

David J. Stoldt
December 14, 2015
Page 7 of 7

environmental impacts attributable to new development. See *Black Property Owners Association v. City of Berkeley*, 22 Cal.App.4th 974 (1994). (By Ordinance 62 the District ceased granting any permit which would authorize new or intensified water use if the to the extent the amount would exceed 21.43 afy for the City of Pacific Grove). The conferring of an entitlement now to use an additional 66 afy for new or intensified water use is a considerable increment over the one af remaining for growth or intensified use in the City.

Sierra Club respectfully requests this matter be removed from the calendar, and that the Ordinance not proceed to a second reading.

Sincerely,

CALIFORNIA ENVIRONMENTAL LAW
PROJECT

A handwritten signature in cursive script that reads "Laurens H. Silver".

Laurens H. Silver on behalf of the Sierra Club,
Ventana Chapter

COLETTI COMMENTS FOR AGENDA ITEM 19 - MPWMD MEETING 12-14-15

1) In Finding 3 staff claims that: "Potable water freed by reason of Project operations shall be available for re-use". Actually, this is not true. As I mentioned in my e-mail, the State Water Board affirmed Section 19.2 of the Cal-Am CDO when they placed a condition on the funding of the PGLWP. This condition states that all water freed up by reason of project operations shall return to the river until such time as directed otherwise.

So, my first question: why is there absolutely no mention of this State Water Board condition in the ordinance and why is the district so defiant about not recognizing it or complying with it?

2) In Section Five it's mentioned: "the district shall reserve 9 acre-feet per year of conserved water for its exclusive use".

My second question: does staff somehow believe the State Water Board's condition does not apply to the District? And further, is it staff's intention to re-use any of this water without consent from the State Water Board? Please be specific.

3) In Section Six it's mentioned: "This ordinance shall take effect upon completion of the Pacific Grove Local Water Project and verification of disconnection from the California American Water Distribution System."

Again, staff is willfully ignoring the Water Board funding condition that effects when and how ALL (not just some) of the saved potable water from this project can be re-used.

Willfully ignoring the Water Board over a 9 acre-feet entitlement for the District is a very bad idea. The district just signed a letter asking the Water Board to extend the Cease and Desist Order. Yet less than a month later you are proposing a water entitlement that is in direct conflict with the no growth policy of the CDO and specific Water Board direction for this project. This gives all the appearance of defying the State Water Board and their direction.

Therefore, I urge you to direct staff to bring back an ordinance that fully reflects the State Water Board's direction and specific conditions for this project. The current Ordinance before you this evening does not do this and should be redone.

Arlene Tavani

From: Luke Coletti <ljc@groknet.net>
Sent: Sunday, December 13, 2015 4:12 PM
To: Lewis4water@gmail.com; wthayer@thayerconstruction.com; kristimarkey@gmail.com; jcbarchfaia@att.net; sandcitymyr@aol.com; district5@co.monterey.ca.us
Cc: Dave Stoldt; David Laredo; Arlene Tavani; robert.maclean@amwater.com; Eric.Sabolsice@amwater.com; Richard.Svindland@amwater.com; O'Hagan, John@Waterboards; Marianna.Aue@waterboards.ca.gov; Barbara.Evoy@waterboards.ca.gov; Darrin.Polhemus@waterboards.ca.gov; Tam.Doduc@waterboards.ca.gov; O'Neill, Brian@Coastal
Subject: Dec 14, 2015 MPWMD Board Meeting, Item 19 - CONSIDER FIRST READING OF ORDINANCE NO. 168 -- AMENDING RULE 11, AND ADDING RULE 23.9 TO ESTABLISH A WATER ENTITLEMENT FOR THE CITY OF PACIFIC GROVE
Attachments: DRAFT_SWRCB_FUNDING_CONDITIONS_FOR_PGLWP.PDF

MPWMD Board Members,

At their Nov 17, 2015 meeting the SWRCB implemented a condition to the funding of the Pacific Grove Local Water project (see initial draft - attached PDF) that affirms Section 19.2 of the Cal-Am Cease and Desist Order (WRO 2009-0060). Section 19.2 of the CDO states the following:

19.2: Any Monterey Peninsula Community that Wishes to Develop Water from a New Source for Growth Must First Apply Water from the New Source to Reduce its Share of the Water Being Illegally Diverted by Cal-Am; Only after its Share of Illegal Diversions from the River is Ended may Water from the New Source be Used for Growth.

The SWRCB unanimously and enthusiastically implemented this condition (affirming Section 19.2) as it relates to the PGLWP and you can view this portion of the Nov 17 SWRCB meeting here (link below):

<https://www.youtube.com/watch?v=m5Eg4DJaiYs>

However, it appears that MPWMD staff doesn't believe this condition applies to the district. Instead, as part of item 19 on your Dec 14 agenda (link below) you are being asked to "thumb your nose" at the SWRCB and grant the MPWMD an entitlement of 9 afy that can be allocated/used without complying with SWRCB desires, detailed in this funding condition.

<http://www.mpwmd.dst.ca.us/asd/board/boardpacket/2015/20151214/19/Item19.htm>

At this point I'd ask you to consider the possible consequences of not acting in good-faith with this SWRCB funding condition:

- 1) Your own \$113M low-interest loan with the SWRCB for GWR could be jeopardized.
- 2) The recent proposal for an extension to the Cal-Am CDO could be jeopardized.

If you believe 9 afy is worth this kind of risk (not to mention being viewed as a bad actor in general) then you might decide it's wise to defy the SWRCB. However, I seriously doubt it would be. Cooperation with the SWRCB seems like a much better approach to solving our regional water problems, which you are responsible for doing.

12

Thank you for your consideration,

Luke Coletti
Pacific Grove

Merrill Gardens at Monterey, LLC

111 N. Post St., Ste 200
Spokane, WA 99201
509-455-5477
509-838-0933 Fax

13

December 10, 2015

Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, CA 93942

ATTN: David Stoldt, General Manager

Re: MPWMD Permit No. 34275 (Merrill Gardens at Monterey, LLC)
APN No. 001-761-037

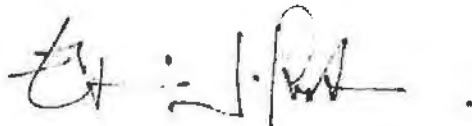
Dear Mr. Stoldt:

We recently received an invoice for fees related to the issuance of MPWMD Water Permit No. 34275, which includes an extremely high charge of \$45,226.55 labeled as a "capacity fee". The Monterey Peninsula Water Management District rules defines a "Capacity Fee" as "a fee retained by the District in consideration of, and as reimbursement for the costs and expenses incurred by the District in planning for, acquiring, reserving, and maintaining capacity in the water distribution facilities existing or to be constructed within the District.

Given the purpose of this capacity fee, it appears that the capacity fee that you have charged for our permit is overly excessive or possibly not applicable to our project. As you are aware, the water supply for this small senior facility at Merrill Gardens will be from on site private wells. The general calculation used to determine the capacity fee for our small project results in a disproportionate charge that bears no relation to the costs and expenses that may be incurred by the District related to our private water system. We simply cannot understand how any such costs or expenses related to our system would amount to \$45,226.55. The special circumstances of this disproportionate fee we believe warrant a fee adjustment or waived all together. We respectfully request that the District reexamine this capacity fee and make an adjustment that is consistent with the purpose of this fee to reimburse the District for its costs and expenses.

We appreciate your time and consideration in this matter. Please feel free to contact me if you have any questions.

Sincerely,



Eric Petersen
Project Manager
Merrill Gardens at Monterey, LLC.
(509) 944-4606

Cc: File

RECEIVED

DEC 10 2015

MPWMD

SRM
DEVELOPMENT, LLC

Eric Peterson, CSBA / Project Manager
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West Coast Region
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404

November 30, 2015

David J. Stoldt
General Manager
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, California 93942-0085

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DEC 1 2015

MPWMD

Dear Mr. Stoldt:

NOAA's National Marine Fisheries Service (NMFS) is writing to express our interest in participating as an interested party in the Monterey Peninsula Water Management District's (MPWMD) development of a Groundwater Sustainability Plan (GSP) for the Carmel Valley Groundwater Basin. On October 19, 2015, the MPWMD notified the California Department of Water Resources (DWR) of their intention to assume responsibility as the Groundwater Sustainability Agency (GSA) for the Carmel Valley Groundwater Basin, in response to the recently signed Sustainable Groundwater Management Act (Act). As part of their notification accepting the responsibility of being a GSA under the Act, the MPWMD was required to supply DWR with a list of "...interested parties developed pursuant to Section 10723.2 and an explanation of how their interests will be considered in the development and operation of the groundwater sustainability agency and the development and implementation of the agency's sustainability plan (Section 10723.8 of the Act)." The list failed to include NMFS, or any other state or federal resource agency with specific expertise in the field of aquatic biology and the biotic needs of imperiled stream-dwelling organisms. This letter formally requests that NMFS be recognized as an interested party during development of the Carmel Valley Groundwater Basin GSP.

The main goal of the Act is to ensure the sustainable management of groundwater basins throughout the state, where sustainable groundwater management is defined as..."the management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results" (Section 10721 of the Act). Of the six "undesirable results" listed within the Act, the one of most concerns to NMFS is "...depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water" (Section 10721 of the Act). The Carmel River channel overlies much of the Carmel Valley Groundwater Basin, and excessively pumping groundwater that is hydrologically connected to surface flow can both decrease river depth and impair water quality. In fact, the Central Coast Regional Water Quality Control Board (CCRWQCB) has listed cold freshwater habitat; fish spawning, reproduction and/or early



development; migration of aquatic organisms; and rare, threatened or endangered species as beneficial uses under their Central Coast Basin Plan (CCRWQCB 2011). NMFS is responsible for implementing the federal Endangered Species Act for anadromous species, including threatened South-Central California Coast (SCCC) steelhead (*Oncorhynchus mykiss*) that inhabit the Carmel River watershed. The SCCC Steelhead Recovery Plan (NMFS 2013) identified both surface water and groundwater extraction as a very high threat to the long-term survival of Carmel River steelhead:

*"...the underlying threat sources that determined the poor to very poor conditions of approximately one-third of those indicators repeatedly pointed to a limited number of anthropogenic causes, including: passage barriers caused by excessive surface and groundwater diversions; passage impediments caused by dams; loss or degradation of spawning substrates below both Los Padres and San Clemente Dams as a result of sediment trapped behind the dams and water management practices, including substantial groundwater use for golf course irrigation; agriculture, urban development."*¹ (NMFS 2013)

Furthermore, the Recovery Plan includes the following critical recovery action:

"Develop and implement operating criteria to ensure the pattern and magnitude of groundwater extractions and water releases, including releases from San Clemente and Los Padres Dams, provide the essential habitat functions to support the life history and habitat requirements of adult and juvenile steelhead." (NMFS 2013)

Ensuring adequate instream flows within the Carmel River is critical to the future recovery of the SCCC steelhead Distinct Population Segment. NMFS looks forward to working with MPWMD and other interested stakeholders in crafting a GSP that protects SCCC steelhead while minimizing impacts to groundwater users and the local economy. Should you have any questions or comments regarding this letter, please contact Mr. Rick Rogers at 707-578-8552 or rick.rogers@noaa.gov.

Sincerely,



Alecia Van Atta
Assistant Regional Administrator
California Coastal Office

Cc: Mark Nordberg, DWR, Sacramento
Mark Capelli, NMFS, Santa Barbara
Gail Seymour, CDFW, Napa

¹ Work to remove San Clemente Dam began during 2014, with complete removal expected in 2015.

Literature Cited

Central Coast Regional Water Quality Control Board. 2011. Water Quality Control Plan for the Central Coastal Basin. June 2011. 223 pp.

National Marine Fisheries Service. 2013. South-Central California Coast Steelhead Recovery Plan. West Coast Region, California Coastal Area Office, Long Beach, California.