Supplement to 9/19/16 MPWMD Board Packet

Attached are copies of letters received between August 9, 2016 through September 7, 2016. These letters are listed in the September 19, 2016 Board packet under Letters Received.

Author	Addressee	Date	Topic
Anthony Lombardo	Stephanie Locke	9/1/16	150 Sea Foam – Request for Cancellation of Water Permit
Alecia Van Atta	Justine Herrig cc: David Stoldt	8/23/16	NOAA Protest Dismissal
Alan Cleaves	MPWMD Board	8/15/16	Water Permit Transfer from 149 Spray Ave., Monterey to 150 Sea Foam Ave., Monterey
Anthony Lombardo	MPWMD Board	8/11/16	150 Seafoam
Eric Sabolsice	Stephanie Locke cc: David Stoldt	8/5/16	Carmel River Cease and Desist Order, Moratorium on New Water Service or Increased Water Service Due to Change in Zoning or Use
" "	Justine Guertin cc: David Stoldt	" "	" "
" "	Robert A. Mullane cc: David Stoldt	" "	" "
" "	Mark Brodeur cc: David Stoldt	" "	" "
" "	Kim Cole cc: David Stoldt	" "	" "
" "	Daniel Dawson cc: David Stoldt	" "	" "
" "	Kurt Overmeyer cc: David Stoldt	" "	" "

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ANTHONY LOMBARDO & ASSOCIATES
A PROFESSIONAL CORPORATION

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(831) 751-2330
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September 1, 2016

Stephanie Locke
Water Demand Manager
MPWMD
P.O. Box 85
Monterey, CA 93942-0085

RE: 150 Sea Foam—Request for Cancellation of Water Permit

Dear Ms. Locke:

Following up on our recent exchange of correspondence, on behalf of our client The Dale Hogan Family Trust, the owner of a vacant parcel at 150 Sea Foam and the adjacent property at 149 Spray Avenue in the City of Monterey, we request the immediate cancellation of recently approved Water Permit #34741.

At the recent appeal hearing regarding our client's water permit application, Cal Am Water's Operations Manager stated that the company considers any sub meter installation a violation of their cease and desist order (CDO). Following the hearing, we had further discussions with Cal Am regarding this issue and were advised that Cal Am would very likely respond to installation of the requested sub meter by removing 149 Spray's existing service meter. The trust has no intention of losing its existing service and therefore seeks the cancellation of Permit #34741.

Enclosed please find a draft for $151 payable to the MPWMD for the requested fee for releasing the deed restriction the MPWMD recently recorded on 150 Sea Foam. Please refund the previously tendered fixture fees care of this office.

The trust will wait until additional water becomes available and the CDO is lifted to proceed with obtaining water for 150 Sea Foam.

Sincerely,

Michael A. Churchill

Michael A. Churchill
MAC/gp

cc: Client
Dave Prew

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

West Coast Region
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404

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AUG 23 2016

RECEIVED
AUG 29 2016
MPWMD

Justine Herrig
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, California 95812-2000

Dear Ms. Herrig:

This letter concerns NOAA's National Marine Fisheries Service's (NMFS) protest dismissal for two of the three water rights applications submitted by the Monterey County Water Resources Agency (MCWRA) for new surface water diversions on the Blanco Drain (Application 33263A), the Salinas Reclamation Ditch (Application 33263B), and Tembladero Slough (Application 33263C) in northern Monterey County, California. The proposed purpose of use for the three diversions is to create purified recycled water for injection into the Seaside Groundwater Basin, and to provide additional recycled water for irrigation within the Castroville Seawater Intrusion Project area. These uses are part of the Pure Water Monterey Project proposed by the Monterey Regional Water Pollution Control Agency (MRWPCA), in partnership with the Monterey Peninsula Water Management District (MPWMD).

As outlined in the applications submitted by MCWRA, the proposed Blanco Drain diversion (Application 33263A) would be a year-round diversion, with a maximum rate of diversion of 6 cubic feet per second (cfs) and would authorize storage up to 3,000 acre-feet (af) annually. The Salinas Reclamation Ditch diversion (Application 33263B) would be a year-round surface water diversion of up to 6 cfs and a maximum of 2,000 af to storage annually. The Tembladero Slough diversion (Application 33263C) would also be a year-round surface water diversion of up to 3 cfs and a maximum of 1,500 af to storage annually. The diverted water would be co-mingled at the Regional Treatment Plant with other source waters before being treated for storage or municipal use or use for irrigation.

NMFS is responsible for administration of the Federal Endangered Species Act (ESA) as it applies to threatened and endangered anadromous salmonids. This responsibility includes working with the State Water Resources Control Board (SWRCB) to resolve water resource issues in concert with conservation of threatened and endangered species (ESA 2(c)(2)).

On February 16, 2016, NMFS submitted individual protest letters to SWRCB for Applications 33263A, 33263B and 33263C. Our protests were based on the potential of adverse impacts to

federally listed species and their habitats, outcomes which would be an adverse environmental impact and not be in the public interest. Specifically, the potential to adversely affect South-Central California Coast (S-CCC) steelhead in the Salinas River and the Reclamation Ditch/Tembladero Slough (Gabilan Creek), which are listed as threatened under the federal Endangered Species Act (ESA). The concerns outlined in our protests were based on the following:

1. presence of ESA-listed S-CCC steelhead in these waterbodies;
2. direct impacts to steelhead habitat and migration success;
3. limits to population recovery; and
4. cumulative effects of water diversions on steelhead and their habitats.

Between February 16, 2016 and June 20, 2016, NMFS met on multiple occasions with representatives from MCWRA, MPWMD, MRWPCA and their consultants to discuss NMFS' concerns with the proposed diversions, and to develop operating criteria (or terms) that would minimize impacts to steelhead and downstream habitats. The California Department of Fish and Wildlife and SWRCB personnel participated in several of these meetings.

On June 21, 2016, NMFS agreed, in principle, with MCWRA to revised operating criteria for the proposed diversions that would minimize or avoid impacts to steelhead and downstream habitats and thereby result in NMFS formally dismissing its protest for two of the three water rights applications; these criteria are enclosed with this letter. Before providing our written dismissal to SWRCB, NMFS requested the receipt of written agreement on the operating criteria from the MCWRA Board of Directors, the Monterey County Board of Supervisors, as well as from management from MPWMD and MRWPCA. These written agreements were received by NMFS between June 29 and July 14, 2016.

To conclude, NMFS is willing to dismiss our protests against MCWRA's water rights applications for new surface water diversions on the Blanco Drain (Application 33263A) and the Salinas Reclamation Ditch (Application 33263B) if SWRCB accepts the enclosed operating criteria and includes them as terms in Permits 33263A and 33263B. However, NMFS' protest against MCWRA's water right application for a new surface water diversion on Tembladero Slough (Application 33263C) remains in effect.

Should any future monitoring determine the diversions and operating criteria agreed to as part of this dismissal process result in unanticipated adverse impacts to steelhead or their habitat, NMFS would like to work collaboratively with SWRCB and the applicants to develop modifications for the diversion operations that would reduce or avoid these impacts.

Thank you for your cooperation in the above and we look forward to continued opportunities for NMFS and SWRCB to cooperate on the conservation of listed species. If you have any

questions or comments concerning the contents of this letter, please contact Joel Casagrande at (707) 575-6016 or joel.casagrande@noaa.gov, or William Stevens at (707) 575-6066 or william.stevens@noaa.gov.

Sincerely,

Alecia Van Atta
Assistant Regional Administrator
California Coastal Office

Enclosure

cc: Julie Vance and Annette Tenneboe, CDFW, Fresno
Lisa McCann, CCRWQCB, San Luis Obispo
Jacob Martin, USFWS, Watsonville
David Chardavoyne, MCWRA, Salinas
David Stoldt, MPWMD, Monterey
Paul Sciuto, MRWPCA, Monterey
Copy to Administrative File: 151416WCR2016SR00298
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ENCLOSURE

7

MONTEREY COUNTY

WATER RESOURCES AGENCY

PO BOX 930
SALINAS , CA 93902
(831)755-4860
FAX (831) 424-7935

DAVID E. CHARDAVOYNE
GENERAL MANAGER

STREET ADDRESS
893 BLANCO CIRCLE
SALINAS, CA 93901-4455

July 15, 2016

Via Electronic and U.S. Mail
AleciaVanAtta@noaa.gov

Alecia Van Atta
Assistant Regional Administrator
U.S. Department of Commerce, NOAA
National Marine Fisheries Service, West Coast Region
777 Sonoma Avenue, Room 325
Santa Rosa, CA 95404

Dear Ms. Van Atta:

Re: Final Protest Dismissal Terms for the State Boards Water Right Application Nos. 32263A and 32263B of the Monterey County Water Resources Agency

The Monterey County Water Resources Agency (MCWRA) received notice from the State Water Resources Control Board (SWRCB) by letter dated February 19, 2016, that the National Marine Fisheries Service (NMFS) as well as the California Department of Fish and Wildlife (CDFW) had protested the subject water rights applications related to the Pure Water Monterey (PWM) Groundwater Replenishment Project. As you are aware, The PWM Project provides safe, resilient, and sustainable replacement water for Monterey County that includes advanced water recycling technology, replenishment of regional groundwater basins to offset use of existing water supplies, and protection of the environment.

Since the February letter, MCWRA staff and the PWM team have met with NMFS and CDFW staff to work toward resolution of the water rights protests filed. There were numerous coordination calls and emails between the parties as well as regular meetings. As the result of those efforts, the final Memo attached to this letter outlines protest dismissal terms addressing each agencies' concerns. NMFS staff requested written acceptance of these terms from the MCWRA Board of Directors, MCWRA Board of Supervisors, MRWPCA Board of Directors, and MPWMD Board of Directors prior to submitting a letter to the SWRCB dismissing the protest for these two water rights. These four governing boards approved the subject terms between June 20-28, 2016 and written acceptance has been forwarded to NMFS.

Because further delays may harm the Pure Water Monterey Project's ability to timely meet Carmel River replacement water supply needs of the Monterey Peninsula related to the State Board Cease and Desist Order, we look forward to the timely completion of the formal protest dismissal process. If you should have any questions or require additional information, please contact Shaunna Juarez at juarezsl@co.monterey.ca.us or (831) 755-4865. Thank you for all your efforts to reach an agreement on these water rights applications.

Sincerely,

David P. Chardavoyne

Attachment

cc:	William Stevens, NOAA NMFS	William.Stevens@noaa.gov
	Joel Casagrande, NOAA NMFS	joel.casagrande@noaa.gov
	Paul Sciuto, MRWPCA	Paul@mrwpca.com
	Dave Stoldt, MPWMD	dstoldt@mpwmd.net
	Shaunna Juarez, MCWRA	JuarezSL@co.monterey.ca.us

REVISED MEMORANDUM

TO: ALECIA VAN ATTA, BILL STEVENS, AND JOEL CASAGRANDE, NATIONAL MARINE FISHERIES SERVICE (NMFS)

FROM: PAUL SCIUTO, MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY (MRWPCA), DAVID STOLDT, MONTEREY PENINSULA WATER MANAGEMENT DISTRICT (MPWMD) AND DAVID CHARDAVOYNE, MONTEREY COUNTY WATER RESOURCES AGENCY (MCWRA)

SUBJECT: PROPOSED PROTEST DISMISSAL TERMS - WATER RIGHTS APPLICATIONS 32263A, BLANCO DRAIN, AND 32263B, RECLAMATION DITCH, MONTEREY COUNTY

DATE: JUNE 21, 2016

CC: SHAUNNA JUAREZ, MCWRA; BILL KOCHER, MRWPCA; LARRY HAMPSON, MPWMD; MIKE MCCULLOUGH, MRWPCA; ALISON IMAMURA, DD&A; BRENT BUCHE, MCWRA; JULIE VANCE, CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE (CDFW); ANNEE FERRANTI, CDFW; ANNETTE TENNEBOE, CDFW

ATTACHMENT: 1. PURE WATER MONTEREY PROJECT FLOWS AND YIELDS

This letter is in response to a request for a synopsis of the Pure Water Monterey Project, issues of concern to National Marine Fisheries Service (NMFS), and a proposal of key protest dismissal terms regarding NMFS's protest of Monterey County Water Resources Agency's (MCWRA) Water Rights Applications #32263A (Blanco Drain), #32263B (Reclamation Ditch), and #32263C (Tembladero Slough).

The Pure Water Monterey Project provides safe, resilient, and sustainable replacement water for Monterey County that includes advanced water recycling technology, replenishment of regional groundwater basins to offset use of existing water supplies, and protection of the environment. The Pure Water Monterey Project will be the first of its kind to utilize not just municipal wastewater and stormwater, but also Clean Water Act Section 303(d) listed, impaired surface waters that flow to the Salinas River, Salinas River Lagoon, Reclamation Ditch, Tembladero Slough, and the Monterey Bay National Marine Sanctuary/Pacific Ocean. The proposed Blanco Drain and Reclamation Ditch diversions are key components of the Pure Water Monterey Project. The Blanco Drain and Reclamation Ditch diversions are estimated to provide about a third of the approximately 10,000 AFY of source water, including unused existing winter wastewater flow, needed as influent to the Regional Wastewater Treatment Plant to implement the Pure Water Monterey Project.

We understand NMFS is concerned that the proposed diversions from Blanco Drain, Reclamation Ditch, and Tembladero Slough, individually and in combination, would reduce the amount of water flowing into the lower Salinas Valley watershed area (specifically, the Salinas River Lagoon, the Tembladero Slough and the Old Salinas River Channel) possibly resulting in adverse effects on S-CCC Steelhead Distinct Population Segment (S-CCC steelhead). Key NMFS comments that the local agencies heard and hereby acknowledge include:

- Requests for adequate bypass flows in the Salinas River, Reclamation Ditch, and Tembladero Slough for fish passage.

- Requests for adequate flows, surface water elevations, and water quality in the Salinas Lagoon (between April 1 and October 31 of certain years), Reclamation Ditch, Tembladero Slough, and Old Salinas River Channel, for fisheries, including ensuring adequate water for any potential future restoration or habitat enhancement in these areas.

The Pure Water Monterey Project team consisting of MRWPCA, MPWMD, MCWRA, and their consultants (Hagar Environmental Services, HDR, Schaaf and Wheeler Consulting Hydrologists and Engineers, Denise Duffy and Associates) and others spent considerable time and resources analyzing the effects of reduced flow on S-CCC steelhead and associated habitat in these waterbodies. The extensive analysis concluded that the Blanco Drain, Reclamation Ditch, and Tembladero Slough diversions would not adversely impact S-CCC steelhead individuals or habitat with approved mitigation and there would be substantive water quality benefits by diverting and treating Blanco Drain and Reclamation Ditch flows. Water produced by Pure Water Monterey from these diversions would have greater benefits overall for public trust resources than the existing benefits provided by these waters to the downstream waters because of both the Carmel River and lower Salinas Valley watershed and groundwater benefits.

In light of the urgent need for protest resolution and NMFS's ongoing concerns, the MRWPCA, MCWRA, and MPWMD present the following offer for proposed terms to enable your protest dismissal on the Blanco Drain and Reclamation Ditch water rights applications. Please note that this offer of settlement is made in the context of seeking a global settlement that resolves the protests filed with the State Water Resources Control Board by NMFS and the California Department of Fish & Wildlife. If NMFS is willing to withdraw its protest on the terms outlined below, then MRWPCA, MCWRA, and MPWMD intend to offer the California Department of Fish & Wildlife (CDFW) identical terms as the basis for the withdrawal of CDFW's protest. Finally, this offer of settlement is conditioned on the issuance of Water Recycling Requirements (WRRs) by the Regional Water Quality Control Board, Central Coast Region (Regional Board) for all of the activities associated with the Pure Water Monterey Project and the associated water rights. MCWRA hereby offers the following terms and commitments in the event that NMFS and CDFW agree that SWRCB can dismiss the protests on Water Rights A32263A and A32263B:

1. MCWRA would commit to cease efforts to pursue the Tembladero Slough diversion (Water Right A32263C) for the Pure Water Monterey Project. MCWRA reserves the right to pursue Water Right A32263C, independently, *only* if all of the following circumstances occur: (1) a future, new project (i.e., not the Pure Water Monterey Project) is proposed by MCWRA that would divert and use the diversion, (2) the new project or projects are subject to a new California Environmental Quality Act process, and (3) the water rights application is amended, for example, through filing a petition to change the water right application, to be consistent with that future proposed project. The water right application will remain active with the State Water Control Resources Board, and NMFS protest of application A32663C would also remain active and be addressed when and if MCWRA proceeds with a new project.

2. This term would address recommendation #1 in NMFS protest letter on Water Right A32263A. Between April 1 and October 31 of years when the Salinas River Diversion Facility has not operated due to dry or drought conditions, and when the Salinas River Lagoon is closed to the ocean, MCWRA shall:
    a. Monitor and report the average daily water levels in the Salinas River Lagoon and the operational characteristics of the slide gate between the lagoon and the Old Salinas River channel.
    b. Maintain lagoon water surface elevation and provide flows to the Old Salinas River channel by adhering to the following two conditions:
        i. If the water level in the Salinas Lagoon drops below 3.0 feet NGVD 29 (or the then-current lagoon water surface elevation management requirement) for 7 consecutive days, then cause MRWPCA to limit Blanco Drain diversions to flows above 2.0 cfs (or to provide an alternative source of 2 cfs to the lagoon that does not currently exists, if not prohibited by other regulations) until the lagoon water surface elevation increases to a minimum of 3.2 feet NGVD 29 or until October 31 whichever occurs first.
        ii. If the slide gate between the Salinas Lagoon and the Old Salinas River channel has been closed for more than 7 consecutive days, adjust the slide gate to allow 0.5 to 1.0 cfs of Salinas Lagoon water to flow into the Old Salinas River Channel <u>and</u> cause MRWPCA to limit Blanco Drain diversions to flows above 2.0 cfs (or to provide an alternative source of 2 cfs that does not currently exist, if not prohibited by other regulations) until the lagoon water surface elevation reaches 3.2 feet NGVD 29 or until October 31 whichever occurs first.

Regarding NMFS recommendations #2 on Water Right A32263A, the diversions would result in no adverse water quality impacts and would in fact result in substantive and quantifiable pollutant load reductions, as documented in previous correspondence. There is no nexus for requiring that the local agencies treat bypassed flows when the Pure Water Monterey Project is resulting in purely beneficial water quality effects.

3. In compliance with recommendation #3 on Water Right A32263A, MCWRA will cause MRWPCA to commit to monitoring water quality of diverted water as required by the SWRCB and RWQCB for construction activities and during operations. [1]

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[1] Water treatment measures would not be necessary because the proposed diversions (Water Rights A32263A and A32263B) would not result in any adverse water quality effects on the downstream water bodies during operation.

4. In compliance with NMFS' recommendations #4 and #5 on Water Right A32263A, MCWRA will cause MRWPCA to commit to including a flow meter and totalizer on the Blanco Drain diversion.

5. To comply with NMFS's recommendations #1 and #2 in their protest letter to Water Right A32263B, MCWRA will cause MRWPCA to commit to divert no more than 6 cfs under the Reclamation Ditch diversion water right and those diversions would be subject to the following minimum bypass flows (as measured at the USGS San Jon Road Gage and as available):
   a. Bypass a minimum of 2.0 cfs, as available, from December 1 through May 31 (in-and out-migration period) except as allowed by item c, below.
   b. Bypass a minimum of 1.0 cfs, as available, from June 1 through June 30 (transitional period)
   c. Bypass a minimum of 0.7 cfs, as available, from July 1 through November 30 (non-migration period). Note: This bypass minimum applies through the end of February of the following year, if no storm event has occurred that results in a flow of 30 cfs or more at the San Jon Road gage.

   To ensure adequate flows for both adult upstream and smolt/kelt downstream migration in the Reclamation Ditch below Davis Road, the MCWRA will cause MRWPCA to commit to cease diverting when flows measured at San Jon Road gage are above 30 cfs (the most conservatively low passage threshold for the San Jon Road USGS gage weir). Diversion may resume when streamflow recedes below 20 cfs at the San Jon Road gage.

   Operational decisions will be based on provisional mean daily and real-time USGS stream flow data. Such provisional USGS data used to make flow-related diversion decisions may not always coincide with final published USGS data.

6. In compliance with NMFS' recommendation #3 on Water Rights A32263B, MCWRA and MRWPCA would request technical assistance from NMFS' engineer staff on the design for the new diversion facility on the Reclamation Ditch.

In addition, NMFS has requested additional considerations for dismissal of the Blanco Drain Water Right that are outside the scope of the Pure Water Monterey Project and water right application (specifically, that MCWRA change their Salinas River Lagoon management protocol). As discussed in the memorandum from the Pure Water Monterey/MCWRA team to NMFS dated May 17, 2016, changes to lagoon management protocol such as increasing the water surface elevation is considered infeasible as part of the Pure Water Monterey Project.

Attachment 1 shows the flows proposed for diversion in the original Water Rights Applications for A32263A and A32263B compared to the diversions and resulting yields anticipated with these proposed terms. If the above terms, or other similar terms, are acceptable to NMFS, the project partners request that the federal agencies find that diversions for the Pure Water Monterey Project are not likely to adversely affect S-CCC steelhead per Section 7 of the Endangered Species Act. If the U.S.

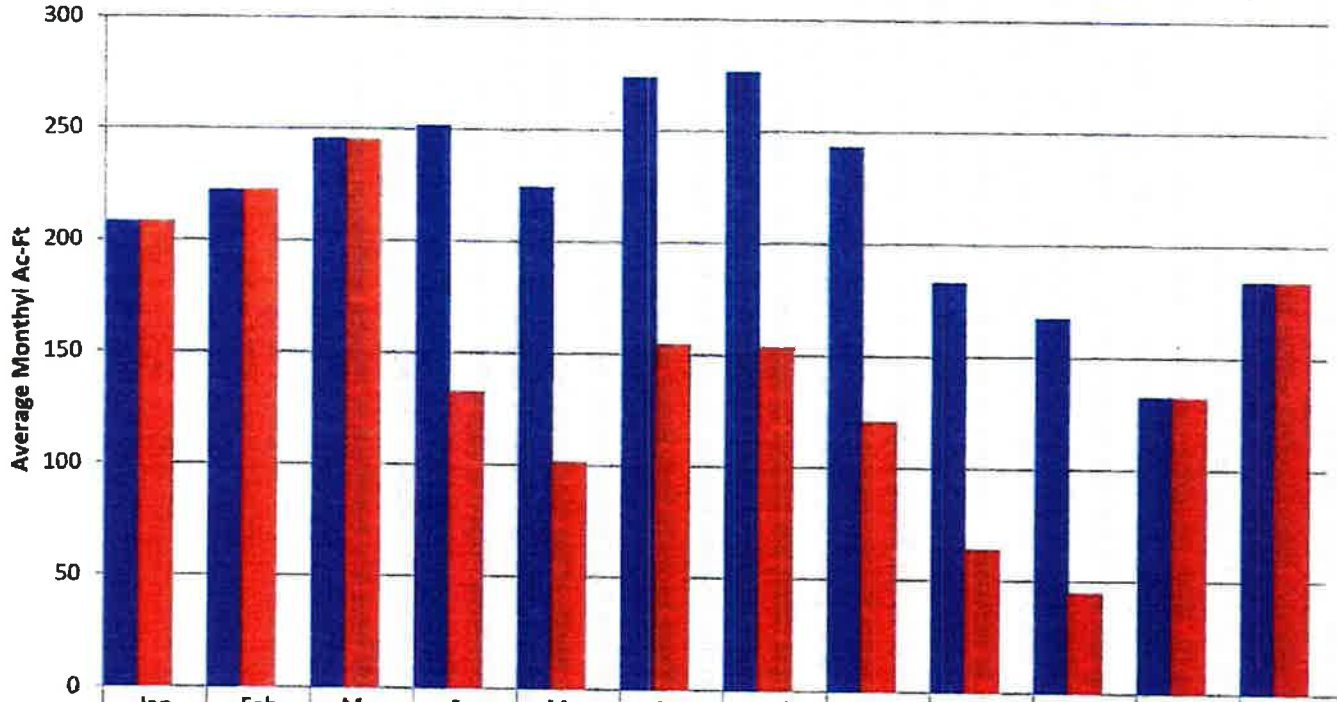
EPA determines and requests NMFS' concurrence on a finding that the Pure Water Monterey Project may affect, but is not likely to adversely affect, S-CCC steelhead, it is requested that NMFS commit to concur in a letter with the federal lead agency's determination within 30 days.

Finally, as mentioned above, this offer of settlement has three conditions: (i) written acceptance by NMFS no later than June 21, 2016; (ii) written acceptance of this identical offer by CDFW by June 30, 2016; and (iii) written concurrence by the RWQCB no later than July 31, 2016, that it will provide documentation to satisfy Paragraph 16.15.3 of the November 3, 2015 Amended and Restated Water Recycling Agreement between MRWPCA and MCWRA. In the event that any one of those three events fails to occur in a timely manner, this offer shall have no binding effect on the Pure Water Monterey Project, MRWPCA, MCWRA, or MPWMD. Please also note that, in an effort to expedite reaching resolution on these very complicated matters, MCWRA has not yet presented this proposal either to the MCWRA Board of Directors or to the Board of Supervisors of the County of Monterey. MCWRA staff intends to present these terms for approval to their Board on June 27, 2016 and to the Board of Supervisors on June 28, 2016. Both governing boards and the SWRCB will need to approve any final resolution of these matters and these offers are subject to such approval at an appropriate time. MPWMD approved this version of the memorandum at their meeting on June 20, 2016 subject to MCWRA and NOAA NMFS agreement on the dry year bypass flow/Salinas River lagoon management issues. MRWPCA staff will also present these terms to their Board on June 27, 2016.

Because further delays may harm the Pure Water Monterey Project's ability to timely meet Carmel River replacement water supply needs of the Monterey Peninsula related to the State Board Cease and Desist Order, we look forward to reaching a mutually agreeable resolution to the protest very quickly. As you know, the Pure Water Monterey Project is vital to the socioeconomic and environmental conditions of the region, and is universally supported by virtually all Monterey Peninsula cities, the Planning and Conservation League, the Surfrider Foundation, the Monterey Bay Aquarium, and local state and federal legislators. If you should have any questions or require additional information, please contact Shaunna Juarez at juarezsl@co.monterey.ca.us or (831) 755-4865.

Attachment 1. June 9, 2016

Blanco Drain Diversion
Yield Reductions with Proposed Protest Dismissal Terms (June 2016)

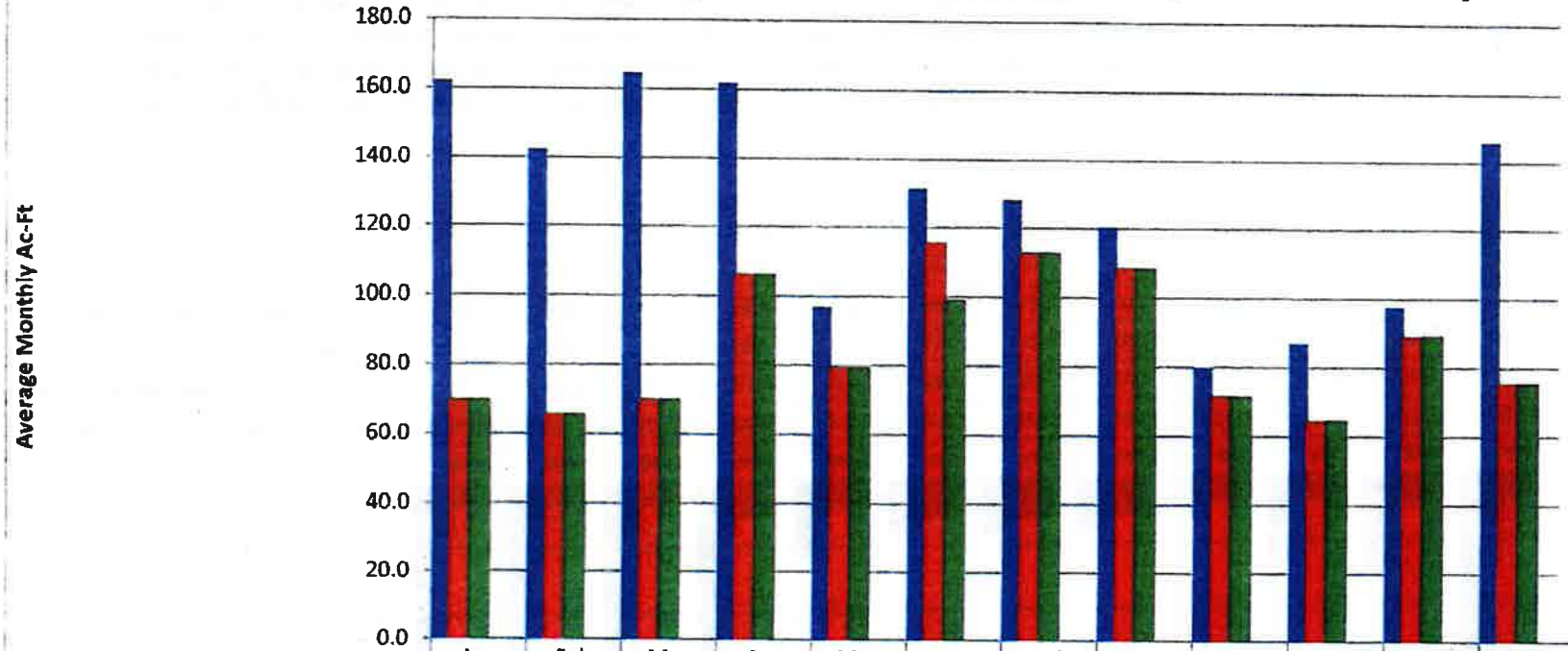


	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Per Water Right Application	209	223	246	252	225	274	277	244	184	168	133	185	2,620
Drought Year per Proposed Dismissal Terms	209	223	246	133	102	155	154	121	65	45	133	185	1771
Yeild Reduction	0	0	0	119	123	119	123	123	119	123	0	0	849

Notes:

1. Application 32263A assumed no minimum bypass and maximum 6 cfs diversion rate (blue bars). Average Yeild 2,620 AFY
2. NMFS requested that 2 cfs be bypassed from APR 1 to OCT 31 in years when the SDRF is not operating (Letter of 2/16/2016).
3. Local agencies propose to comply with a 2 cfs bypass, if lagoon conditions warrant the bypass (see June 2016 Memo). Yield reductions shown reflect a year when the conditions for the 2 cfs bypass are met for the full time period of interest (April 1 through and including October 31). Average Yield 1771 AF (32% reduction)

Reclamation Ditch Diversion at Davis Road
Yield Reductions with Proposed Protest Dismissal Terms (June 2016)



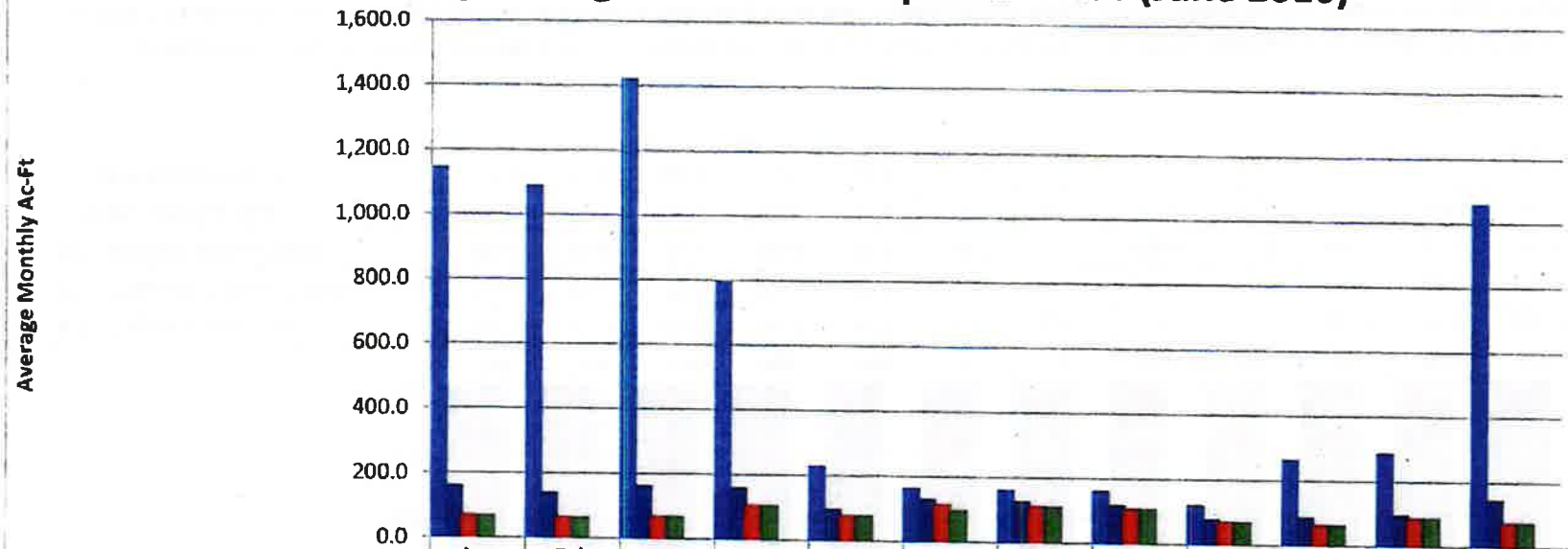
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
A. Proposed Diversion	162.1	142.6	164.6	161.9	97.3	131.7	128.7	120.6	80.1	87.3	97.9	146.3	1,521.1
B. Proposed Protest Dismissal Terms	69.8	65.8	70.0	106.4	79.5	115.8	113.1	108.6	71.6	64.9	89.3	75.6	1,030.4
C. NMFS Proposed Terms	69.8	65.8	70.0	106.4	79.5	99.2	113.1	108.6	71.6	64.9	89.3	75.6	1,013.8
Yield Reduction (A-B)	92.3	76.7	94.6	55.6	17.8	15.9	15.6	12.0	8.5	22.5	8.6	70.6	490.7
Yield Reduction (A-C)	92.3	76.8	94.6	55.5	17.8	32.5	15.6	12.0	8.5	22.4	8.6	70.7	507.3

Notes:

1. Proposed diversion (A32263B) included seasonal bypass of 0.7 cfs (JUN-NOV) and 2.0 cfs (DEC-MAY). Average annual yield 1,521 AFY.
2. NMFS requested and local agencies agree to cease diverting from Reclamation Ditch when flows exceed 30 cfs, and to not recommence diverting again until flows recede below 20 cfs. Average annual yield 1,030 AFY (32% reduction)
3. NMFS further requested that the seasonal bypass flow in June be 1.0 cfs (Scenario C).

Attachment 1. June 9, 2016 (continued)

Reclamation Ditch Diversion at Davis Road
Existing Average Flows and Proposed Yields (June 2016)



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Average Monthly Flow	1,148.4	1,091.5	1,423.3	798.6	231.4	167.2	164.4	163.8	123.3	265.9	289.7	1,060.6	6,927.9
A. Proposed Diversion	162.1	142.6	164.6	161.9	97.3	131.7	128.7	120.6	80.1	87.3	97.9	146.3	1,521.1
B. Proposed Protest Dismissal Terms	69.8	65.8	70.0	106.4	79.5	115.8	113.1	108.6	71.6	64.9	89.3	75.6	1,030.4
C. NMFS Proposed Terms	69.8	65.8	70.0	106.4	79.5	99.2	113.1	108.6	71.6	64.9	89.3	75.6	1,013.8
Yield Reduction (A-B)	92.3	76.7	94.6	55.6	17.8	15.9	15.6	12.0	8.5	22.5	8.6	70.6	490.7
Yield Reduction (A-C)	92.3	76.8	94.6	55.5	17.8	32.5	15.6	12.0	8.5	22.4	8.6	70.7	507.3

Notes:

1. Light blue bars show average monthly flow in Reclamation Ditch at the San Jon Road gage. Average flow 6,928 AFY.
2. Proposed diversion (A32263B) included seasonal bypass of 0.7 cfs (JUN-NOV) and 2.0 cfs (DEC-MAY). Average annual yield 1,521 AFY.
3. NMFS requested and local agencies agree to cease diverting from Reclamation Ditch when flows exceed 30 cfs, and to not recommence diverting again until flows recede below 20 cfs. Average annual yield 1,030 AFY (32% reduction).
4. NMFS further requested that the seasonal bypass flow in June be 1.0 cfs (Scenario C).

RECEIVED
AUG 15 2016
MPWMD

To: MPWMB Members

From: Alan Cleaves
147 Sea Foam
Monterey, CA

Subject: Water Permit Transfer from 149 Spray Ave, Monterey to 150 Sea Foam Ave, Monterey

Frist off let me say that I planned on being back in California for the meeting tonight but this is not the case. I have talked to several employees and have asked a lot of questions and they know where I stand on the potential transfer of credit. Just to state it for the record, I am in total support of Jayme Fields and Marc Cusenza in requesting that the water permit/credit transfer from 149 Spray Ave to 150 Sea Foam Ave be denied.

A package has been submitted to the Board that stated that when the house was originally built and approved, the plans show that there was to be only one (1) shower head in the upstairs bathroom and only one (1) shower head in the downstairs bathroom. The Building Dept. has stated that no additional building permits have been issued for this house until after the house was sold to the Hogan's Trust.

The board has received statements/letters from various people (e.g. appraiser, trustee, the emergency care person) prior to the sale, that there was only one shower head in each of the bathrooms and that there was no laundry sink at the house in question. The questions that I pose: were these items added after the sale of the house? Was there a permit for these? Even the pictures submitted that were as part of the listing of the home, do not show additional shower heads.

There is a lot more information in the package to justify the denial of the transferring of the water credits (that were really not there).

Even though I an out of state, I am watching this process very carefully and am hoping for a just outcome. Thank you for taking the time to read the package that was submitted and for reading this letter.

Sincerely

Alan Cleaves

ANTHONY LOMBARDO & ASSOCIATES
A PROFESSIONAL CORPORATION

ANTHONY L. LOMBARDO
KELLY MCCARTHY SUTHERLAND
MICHAEL A. CHURCHILL
CODY J. PHILLIPS

144 W. GABILAN STREET
SALINAS, CA 93901
(831) 751-2330
FAX (831) 751-2331

August 11, 2016

Jeanne Byrne, Chair
Members of the Board of Directors
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942-0085

RE: 150 Seafoam

Dear Chair Byrne and Members of the Board:

Our firm represents The Dale Hogan Family Trust who is the owner of a vacant parcel at 150 Seafoam and the adjacent home at 149 Spray Avenue.

The Trust purchased 149 Spray Avenue and the Seafoam lot from an estate after the previous owner passed away. The District has visited the property 3 times in the last 2 years and performed its inspections. Based on these inspections and retrofitting of the existing fixtures the Trust was able to generate an adequate number of water credits in order to construct a very modest home on the adjacent Seafoam lot.

As so often happens, neighbors who have become accustomed to looking over a vacant lot are opposed to the construction of any new home that would impact their existing views. This neighborhood is particularly well known for residents expressing those types of concerns.

The Hogans' project is no exception.

The appellants have contested my client's design approval for over a year. The construction documents were completed and submitted for the building permit prior to this appeal. John Kuehl, City of Monterey Building Inspector has issued a "hold" awaiting resolution of this hearing before the City will issue a building permit.

In this case, after the Monterey Peninsula Water Management District confirmed the available fixture credits, the property owners spent considerable sums having the home designed and obtaining the necessary approvals from the City. The application for the home was submitted in August 2015 and orange netting was erected on the lot as required by the City. After the netting was placed and prior to the initial Architectural Review hearing, one of the appellants, Mrs. Fields, added large picture windows facing the vacant lot in an area that had been a solid wall. Thereafter these windows became the basis of her complaint to the City about the impact on the view from the new windows.

What followed was the typical litany of objections from the appellants, including the attached letter of January 26, 2016 from Mrs. Fields objecting to the design and location of the home. She further suggested, along with Mr. Cusenza, that the home be lowered *6 feet into the ground* and variances be granted in order to push the home to the rear lot line to preserve her new view. (Exhibit A, attached hereto.)

The first Architectural Review Committee meeting for the City of Monterey was held on February 3rd and two of the appellants, Ms. Fields and Mr. Cusenza expressed the desire to have the City preserve their views and Ms. Fields, for the first time, said that when she purchased her home she believed that the vacant lot at 150 Seafoam could never be developed. (Exhibit B, attached hereto.)

At the conclusion of the February 3rd ARC meeting, the Board asked the designer David Prew to consider certain revisions to accommodate some of the appellants' concerns and return with a revised design for their consideration.

Mr. Prew returned on April 6th to the ARC to present revised plans based on the direction previously provided by the ARC.

All 3 appellants appeared and objected to the approval of the revised design. Mr. Cleaves complained about the fact that although he had a panoramic view of the ocean from his home, he was concerned the new home would block his view of the airport and hills.

After one of the ARC members questioned Mr. Cusenza about the basis for his belief that this legal lot of record would not be buildable, Mr. Cusenza said that a real estate agent and an appraiser told him it was not developable. An ARC member asked him if anyone from the City had ever made such a representation to him and he said no.

The ARC's comments, which are attached as Exhibit C, may explain why the appellants have been able to enlist the former real estate agent, appraiser and *trustee* in opposing the construction of this house. When ARC member Freeman made comments regarding her support for the design of the home and praised the efforts to satisfy the neighbors, she made a comment that she did not believe it was reasonable that the neighbors would expect that the lot would remain vacant and noted that if comments were made by the real estate agent, the trustee or the appraiser misrepresenting the status of the lot, that the appellants should consider litigation against those individuals rather than against the City.

The appellants continued to oppose the approval of the home, including when the final design of the home was considered by the ARC (Exhibit D, letter dated May 11th). The final design was then approved unanimously by the ARC.

Not satisfied with the ARC's decision, the neighbors appealed the approval to the City of Monterey Planning Commission (a copy of which is attached as Exhibit E), again complaining about the loss of views from their homes. The Monterey City Planning Commission denied the appeal unanimously, upholding the decision of the ARC to approve the project.

Having failed to convince the City of Monterey that the residential lot should either remain permanent open space or that the home should either be buried into the sand dune or shoved up against the rear of the lot to improve their views, the appellants have now challenged the District's determination that there are sufficient water credits available to build the home.

Not unsurprisingly, based on the comments made at the City of Monterey ARC, the individuals who the City suggested to the appellants were culpable for any misrepresentations regarding the ability to build on the lot, have now been enlisted by the appellants to say that they were not aware of the existence of the fixtures.

Ms. Fields attempted to purchase this property before my client purchased it. Her offer to purchase was rejected in favor of my client's offer. Possibly, Ms. Fields low offer was based on the representation from the trustee, appraiser and realtor that the vacant lot would never be built upon. In any event, if the appellants have any issue, it should be with the individuals who made that representation to them, not my clients.

There is absolutely no conclusive documentation that I am aware of in either the listing information, transfer disclosures, appraisals or in photographs that indicates anything about the fixture units other than those documented by the District's inspections.

It has been my experience that, absent some type of irrefutable evidence (such as provided by a governing body) regarding the existing water fixtures, the District has always relied solely upon its own inspection report in determining the existence of fixtures and the availability of credits. I do not believe, in this case, that there is any evidence provided by the appellants that would justify the District deviating from that long standing practice.

Obviously, the issue of the appellants with this project has nothing to do with the water credits. It has to do with their attempts to ensure, as apparently represented by a real estate agent and appraiser that the lot will never be built upon.

On behalf of the Hogan Trust, I respectfully request that you deny the appeal and affirm the credits to allow the property owner to proceed with the construction of their home.

Respectfully submitted,

Anthony L. Lombardo
ALL/gp

Enclosures
cc: Client
Dave Prew

EXHIBIT A

ATTACHMENT 2

Architectural Review Committee
City of Monterey

RECEIVED

JAN 26 2016

City of Monterey
PEEC DIVISION

Re: 150 Seafoam Ave; Permit 15-483

We have heard from the owner that there were not a lot of places to put the proposed house on its lot, but ARC can give flexibility and has been given further authority to do so by the Planning Commission.

We would like to see the new house:

- Lowered,
- Centered or moved toward the north-east side of the lot (which has no neighbors), and/or
- Pulled back on the lot (toward its rear fence).

We propose these location modifications, and variances, in order to mitigate the negative impact on existing view and light corridors for 148 and 147 Seafoam Avenue and 145 Spray Avenue. Corridors which we just purchased our home at 145 Spray Avenue to enjoy! These modifications will also keep the new house in line with the way neighboring houses are situated on their lots.

Such considerations appear reasonable based on the fact that:

- The new house gains no view by staying at the proposed high elevation and loses no view by being moved to a lower, recessed location.
- The proposed design at its current elevation presents the image of a three-story house, which is out of place for the neighborhood.
- The ground level of this lot is higher today than when the lot was originally subdivided due to the activity of wind and sand over the years.
- The tall, straight side of the proposed house is crowding the south-west border of the property while the north-east is wide open
- Movement of the house on the lot provides mitigation of negative impacts while allowing the owner to maintain the current proposed building structure with no expensive design modifications.
- Overall, the placement of the house, with aggressive grading if necessary, is the best way to meet the needs of all involved parties.

We would encourage consideration of encroaching on the rear set-back and the north east set-back to best minimize the negative impacts of the new house on its existing neighbors.

The suggested mitigations are feasible:

- There is a strong precedence in our neighborhood of moving the naturally flexible sandy soil to meet the needs of surrounding neighbors. The houses at the end of Spray Avenue are a prime example. A few hours and a truck can make a huge difference.

EXHIBIT A

ATTACHMENT 2

- All of the other houses in this area utilized retaining walls on their up-hill sides to achieve their desired lot locations; a five or six foot retaining wall (or wall built into the house structure) would not be out of place.
- The architect has mentioned that this placement preserves the views from 149 Spray Avenue (the owner's other house), but view *sharing* is the design guideline for the neighborhood and we are asking that the view be shared with others.

Taking away views while not gaining one is the reverse of what we try to achieve when considering new construction in the neighborhood. Lowering the house, and moving it back and to the north-east of the lot, are a small investment to make this new house a good fit. We invite you to not allow the building of the house at the maximum slope, and instead require it to be lowered and re-positioned.

Jayme and Jack Fields
145 Spray Avenue
Monterey, CA

RECEIVED
JAN 26 2016
City of Monterey
PEEC DIVISION

EXHIBIT B

Ms. Hopper said yes, however it would be difficult for some vehicles to access the garage at that slope.

Committee Member Latasa asked if the idea of locating a driveway off of Surf Way had been discussed and whether or not the site has water credits.

Ms. Hopper said water credits would be transferred to 150 Seafoam Avenue from 149 Spray Avenue.

Committee Member Freeman asked if the proposed setback could be moved further back on the lot.

Ms. Hopper said yes.

Committee Member Freeman asked if the proposed elevator required roof equipment.

Ms. Hopper said that was not a requirement for residential elevators.

Chair Kimzey asked if the Applicant would be required to replant the lot with native vegetation.

Ms. Hopper said that because the site is a natural dune, replanting it would be difficult and the Applicant would not be required to meet the recommended 85% revegetation.

Applicant

Dave Prew, designer of the project, said that his clients originally bought the house at 149 Spray Avenue which included the lot at 150 Seafoam Avenue. He said that the water fixtures were reduced at 149 Spray Avenue so they could transfer credits to 150 Seafoam Avenue. He said that he and his clients thought it would be best to create an eclectic design to complement the neighborhood and they would like it to be accessible for aging occupants. He said that is a goal to try to maintain the views of the neighbors as best as possible. He said that due to sand retention, pulling the home back on the lot would create a more expensive project. He said that they wanted to leave the land as natural as possible. He noted that sinking the structure by six feet would cause the garage to dip underground, making it impossible to use the driveway. He said that he intentionally worked to retain the neighbor, Marc Cosenza's, window view. He expressed concern that lowering the house seemed impractical, and that they had gone to great lengths to preserve views of the surrounding neighbors.

Committee Member Abma asked if lowering the house by four feet would cause severe design and functionality problems.

Mr. Prew said that he believed so.

Committee Member Theodore asked if the lot would be re-graded if the house was lowered by four feet.

Mr. Prew said that the site would be left intact with the topography remaining as is.

Committee Member Abma asked if the house was situated as far back on the lot as possible based on the rear yard setback.

Mr. Prew said yes, in order to preserve the neighbors' views.

EXHIBIT B

Committee Member Freeman said that each one of the houses along the block is set back a certain distance back from each other one, but that his design appears to be forward of the others in line.

Mr. Prew said that if he moved the house back, he felt he would be moving it higher on the slope and thus impacting neighbors' views.

Public Comment

Mark Cosenza of 148 Seafoam Avenue said that a as neighbor of the homeowner of 149 Spray Avenue, he was under the impression that the lot could not be developed at 150 Seafoam Avenue until water was available. He expressed concern that the majority of the gradient was closer to his house, and noted that he felt if the house was moved back and toward Surf Way the gradient would be minimized.

Jamie Fields of 145 Spray Avenue said that she purchased her house specifically for the view and she did not believe that the lot at 150 Seafoam Avenue could be developed. She noted that many of the homes in the area have retaining walls and that it may be a consideration for the project at 150 Seafoam Avenue. She said that in the past, builders of homes had moved their structures to mitigate view impacts on neighboring homes. She said this project appears to be a three-story structure, while others in the area are two-story structures. She asked that the Applicant consider lowering the house six feet in consideration of neighbors' views.

Committee Member Comments

Committee Member Latasa asked if the house could be pushed further back on the lot.

Ms. Hopper said it could be pushed back to zero lot line; however that would not be ideal.

Committee Member Freeman expressed concern that moving the site toward Surf Way may not be a good idea.

Committee Member Latasa said that placing the driveway on the Surf Way side would involve redesigning the house.

Mr. Prew said that he could lower the overall height of the building two feet without interrupting the driveway or floor levels because the ceilings were currently proposed at nine feet.

Committee Member Latasa asked Mr. Cosenza if he felt that his view would be improved if the house was moved back on the lot.

Mr. Prew said that he was trying to be sensitive to Mr. Cosenza's privacy.

Mr. Cosenza said that he felt the house should be moved a bit towards Spray Avenue in order to mitigate the view impact.

Committee Member Freeman noted that many of the houses in this neighborhood have retaining walls.

Chair Kimzey asked if the natural terrain is sloping upward from the street.

Ms. Hopper said yes, that it slopes up from the corner about 16 feet.

EXHIBIT C

conjunction with the house at 149 Spray Avenue.

Committee Member Freeman asked if anyone from the City of Monterey told Mr. Cusenza that the lot was unbuildable.

Mr. Cusenza said no, but that he could obtain paperwork to show that the trust and the listing service said that the lot was unbuildable. He said that the trustee could also note that the property was not meant to be divided.

Applicant

Mr. Prew said that he was unaware of the details regarding the sale or value of the lot, but noted that if there was a vacant lot in the area, it would eventually be developed. He said that land is too precious on the Monterey Peninsula. He said that Mr. Cleaves' views were a concern to him, noting that he had tried to mitigate view impacts. He said that his clients should not be discriminated against for being the last ones on the block and that they deserved to have a nice living space and high-quality architecture. He said that he chose the 8.66% slope for the driveway because it was a center slope and although it was not perfect, it would make an accessible house with a good design.

Committee Member Comments

Committee Member Theodore asked for clarity on 145 Spray Avenue and the view impact that Ms. Fields was concerned with.

Ms. Fields explained the view and said that she planned to build a deck and an area with interior windows that would further allow a view of the bay. She said that looking east, not north, one can see the ocean over the rooftops on Surf Way.

Committee Member Latasa noted that the maximum height limit was 25 feet. He asked what the maximum height limit proposed for the house at 150 Seafoam Avenue was.

Ms. Hopper said that it was 24.8 feet. She also explained that at no point does the house incorporate a three-story element. She said that the house steps up the hill, so there was no portion above two stories.

Committee Member Freeman said that she believed that an architect's first duty was to satisfy the client and that Mr. Prew had gone to some length to satisfy both the neighborhood and his client. She said that she did not believe that the neighbors could expect to keep the lot vacant forever, and in an attempt to mitigate view impacts, it seems that Mr. Prew had done an outstanding job. She said that she felt the house design was superior, as well. She noted that Mr. Cusenza's point that the real estate agent's and trustee's misrepresentation of the lot's availability to be built upon was serious and any litigation should not be brought against the City but against those parties. She said that she supported the changes in design.

Chair Kimzey said that he believed the Applicant had followed the ARC's guidance and that he would support going forth with the storypole staking.

Committee Member Latasa said that he agreed with Chair Kimzey. He said that he felt the Applicant had heeded the ARC's requests for change in design. He noted that the nature of residential neighborhoods was for the lots to eventually fill in and said that he felt the Applicant had responded in a positive way.

Committee Member Abma said she believed that the Applicant responded in a positive

EXHIBIT D

ATTACHMENT 4

May 11, 2016

City of Monterey Architectural Review Committee (ARC)

Mr. Charles Kimzey Chair

Re: 150 Seafoam Avenue, Monterey, CA 93940

Dear Mr. Kimzey,

I was standing on my deck this afternoon (which is across the street from 150 Sea Foam) and a construction crew started to adjust the poles indicating the height of the proposed house. I do not know at what height the pools and netting is set, but to me there is no change. I will lose about 95% of my mountains and airport views. I have attached a new picture of the new poles and netting. As you can see by the pictures, the proposed rental house is not consistent with the law/code of shared views. Again, Mr. Prew's statement that the proposed roof line will be the same height as the other roof lines is not true, just look at the pictures.

Again, I need to point out that this deck is the only place that can be used for outdoor functions such as bar-b-queing, entertainment of family / friends and / or just plain relaxing in the sun. I do have an outdoor table and 8 chair set-up on this deck along with a bar-b-que and outdoor cooking bar-b-que work station. The view of the surrounding hills and airport are very important to me and the market value of my property.

I have given Mr. Marc Cusenza and Mrs. Jayme Fields permission to speak for me at any meetings and site visits pertaining to 150 Seafoam as I will be out of town for the next few months. Both are allowed to take people on to my deck for the purpose of seeing the 95% mountain view and airport view that I will lose.

I stand by my letter/pictures of April 9, 2016 and request that the height of the proposed house be at least 8.5 feet lower than the original plans. If this is not acceptable to the owner, maybe this rental house design is not suited for this lot.

EXHIBIT D

I would like this letter and pictures placed into the minutes/records at the next 150 Seafoam project discussion / agenda item so that the full ARC can see my concerns with the height of the proposed building and the loss of market value.

Thanks you for your understanding and your time in this matter.

Sincerely

Alan Cleaves
Homeowner
147 Seafoam Ave, Monterey, CA 93940

EC: Christy Hopper, Senior Planner

Mr. Cusenza

Mrs. Fields

Attachments:

A - Pictures

Copy of picture submitted with letter dated April 9, 2016 of anticipated lost view of Airport and Control tower

Picture taken after new poles and netting installed on May 11, 2016, confirming view loss of airport, control tower and most of the mountains.

EXHIBIT E

PLANNING, ENGINEERING &
ENVIRONMENTAL COMPLIANCE DIVISION

APPEAL TO: ARC ____ Planning Commission X City Council ____ **FEE** $328

FROM ACTION OF: 150 Seafoam Avenue: Preliminary and Final Approval of AR Permit 15-293
DATE OF ACTION: June 1, 2016
APPELLANT'S NAME: Alan Cleaves, Marc Cusenza and Jayme Fields
MAILING ADDRESS: 147 and 148 Seafoam Avenue and 145 Spray Avenue
E-MAIL ADDRESS: eacleaves@msn.com, marccusenza@yahoo.com, jaymecfields@gmail.com
PHONE NUMBER: (831) 402-8877, (831) 751-5573
APPELLANT'S INTEREST: impact on view from 147 and 148 Seafoam Ave and 145 Spray Ave
(Zoning Ordinance Section 38-206)

SUBJECT OF APPEAL: ***(To be completed by PEEC Staff only.)***
ORIGINAL APPLICATION NUMBER: 15-293 **APPEAL NUMBER:** P.11-258
TYPE OF APPLICATION: Arch. Review **Staff Initials:** CH
(Use Permit, Variance, Architectural Review, etc.)
DESCRIPTION OF APPLICATION: New 2-story Residence
STREET ADDRESS OF SUBJECT PROPERTY: 150 Seafoam Avenue
Date Received: 6/13/2016

APPELLANT'S REASON FOR APPEAL:
Information not considered by the Architectural Review Committee could significantly improve the project outcome, acheiving a greater balancing of interests. See the attached for further details.

Appellant's Signature **Date** 6/12/16

Reasons for appeal shall pertain to factual information considered by the last reviewing body. No new factual information may be submitted. You will receive a notice of the hearing date.

Reviewed by [illegible] 6/13/2016 ~~7/28/2016~~ **Date**
45 Day Period from date of filing ends: 7/28/2016

EXHIBIT E

RECEIVED

JUN 13 2016

City of Monterey
REC DIVISION

APPELANT'S REASON FOR APPEAL:

The neighbors have concerns over mass and view impacts from the proposed new structure. The neighbors feel that their rights under the Del Monte Beach land use guidelines were not given the weight that they should have been. Specifically:

- There was confusion over the neighbor's requests.
- The restaking was contrary to the neighbors' request.
- The majority of the committee did not attend the fieldtrip to see the restaking.
- Multiple options were not presented as requested.
- None of the neighbors' view concerns were addressed.
- There is uncertainty about availability of water for the project (from both Monterey Peninsula Water Management District and Cal Am).

Consultation with an architect has uncovered a simple solution which was not presented to, nor considered by, the Architectural Review Committee. The proposed compromise:

- Helps open the views
- Helps reduce the mass
- Corrects the negative impact on the neighbor of the previous design change

Despite the fact that multiple options were requested, only one option was presented to the Architectural Review Committee and it did nothing to address the view concerns that had been raised by the neighbors. Citing ADA access constraints, the option that was presented worsened the impact of the project. The appellants believe that the review process was not complete and that, after consultation with an architect, there is a solution that should be considered:

- Measuring the ADA compliant driveway slope at the downhill or east side of the driveway, using an ADA compliance path width, leaves room for the house to be lowered another 6 inches while maintaining ADA access via the driveway.
- Pulling the house back, or south, on the lot by six feet moves the side of the house out of the bay window view from 148 Seafoam and allows the house to be lowered another 6 inches.
- Dropping the ceiling in the garage to 7 feet 6 inches brings the ceiling more in line with the non-habitable laundry room and lowers the house height another 6 inches.

Based on the new calculations, the applicants are asking the Planning Commission to consider these changes. These simple changes undo the negative impact on 148 Seafoam of the applicant's proposed forward movement of the house, open up the view corridor to the bay for 145 Spray and give back some of the hillside view to 145 Seafoam.

The above solution is a compromise; more aggressive changes could be suggested that would further mitigate the negative impact. These include lowering the height of the first floor from 9 feet to 8 feet, lowering the garage another 6 inches to align it with the proposed lowered ceiling in the laundry room, moving the house east (toward Surf Way) into the 15 foot setback and/or significantly lowering the house by moving the driveway to the ADA accessible Surf Way. This last option is used by most houses on the street and would allow the theoretical occupant of this rental property to safely exit the driveway (which cannot happen in the proposed structure due to the slope of Seafoam).

In addition, the land use attorney raises the concern that the project is not likely to receive water. The Monterey Peninsula Water Management District recently stated that the proposed water source for this project was not in keeping with their policies. They have now issued Ordinance 170 to eliminate the residential water meter "loophole." Further, even if the District were to allow for the transfer of water credits, Cal AM is subject to its own regulations and installation of a new meter where none was present before would be a violation of its CDO.

As can be seen in the minutes, the Architectural Review Committee and City Planning staff were confused over the requests of the neighbors. Further, it does not appear that existing views were given the priority that they should have received per "City of Monterey Zoning Ordinance and Guidelines for Single Family Dwellings adopted in 1987". It is hoped that the results of this new analysis present a clear basis for compromise. This house takes away views without achieving any of its own. There is no equitable way to give value to one view over another; therefore in accordance with the Del Monte Beach Land Use Plan and Monterey Ordinance E, every effort must be made to find the middle ground. These proposed changes do so.

CALIFORNIA
AMERICAN WATER

Eric J. Sabolsice
Director, Operations
Coastal Division
511 Forest Lodge Road, Suite 100
Pacific Grove, CA 93950
eric.sabolsice@amwater.com

P 831.646.3291
C 831.236.1011
F 831.375.4367

August 5, 2016

Stephanie Locke
Water Demand Manager
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942-0085

Re: Carmel River Cease and Desist Order, Moratorium on New Water Service or Increased Water Service Due to Change in Zoning or Use

Dear Ms. Locke:

As you know, California American Water is operating under a Cease and Desist Order (the "CDO"[1]), which was issued by the State Water Resources Control Board ("State Water Board") in October of 2009. Among other things, the CDO prohibits California American Water from supplying water from the Carmel River for new water service connections or for any increases in use at existing connections if the increase results from a change in zoning or use. To implement these prohibitions, California American Water was required to file an application with the California Public Utilities Commission ("CPUC") to institute the Moratorium on New or Expanded Water Service Connections (the "Moratorium"[2]) in our main Monterey district service territory. The Moratorium decision from the CPUC requires California American Water to deny requests for new service connections and prohibit any increased use of water at existing service addresses resulting from a change in zoning or use.

On July 19, 2016, the State Water Board issued Order WR 2016-0016 (the "Amended Order"[3]), amending certain provisions of the CDO and extending the CDO's deadline to reduce unauthorized Carmel River diversions to December 31, 2021. At that Board meeting, California American Water President Rob MacLean and numerous members of the community expressed concerns about application of the CDO's prohibitions to situations involving an intensification of use. Numerous speakers also requested that the

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[1] A copy of the CDO can be found at http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/2009/wro2009_0060.pdf.

[2] A copy of the Moratorium can be found at: http://www.amwater.com/files/Rate%20Schedule%20Monterey%20Main%20(01-01-15).pdf (see Revised C.P.U.C. Sheet 6509-W, Special Condition 22).

[3] A copy of the Amended Order can be found at: http://www.swrcb.ca.gov/waterrights/board_decisions/adopted_orders/orders/2016/wro2016_0016.pdf.

State Water Board provide more flexibility to local jurisdictions in making land use decisions. Ultimately, in adopting the Amended Order, the State Water Board left the CDO provisions relating to the Moratorium unchanged, but requested that Staff meet with stakeholders over the next several months to discuss a possible solution to address community concerns. Thus, although the Moratorium remains in place, California American Water will work with State Water Board Staff, the Monterey Peninsula Water Management District, and other stakeholders to clarify provisions concerning changes in zoning or use, and intensification of use, and we will keep you apprised of any substantive or procedural changes that may arise through such discussions.

In the meantime, as an agency with jurisdiction to issue permits for new construction and/or changes in zoning or use, California American Water requests your continued cooperation and assistance in making property owners and project proponents aware of the CDO, the Moratorium, and the fact that projects may ultimately be prohibited based on the restrictions these orders include. When evaluating projects that may require new water connections or may result in increased water use at existing connections, we request that you consult with California American Water as early as possible so that we can avoid confusion for property owners and/or project proponents, allowing them to make informed decisions early in the approval process. Please keep us informed about proposed water demands for new and redevelopment projects so that we may evaluate the project's needs on a case by case basis, work with the State Water Board if necessary, and inform the project owners and developers about our ability to serve the project in the future.

If you have any questions about the CDO, the Moratorium or this request, please feel free to reach me at (831) 646-3291 or eric.sabolsice@amwater.com. You may also wish to contact Dave Stoldt at the Monterey Peninsula Water Management District for more information.

Sincerely,

Eric Sabolsice
Director of Operations
California American Water Coastal Division

cc: David Stoldt, General Manager
Monterey Peninsula Water Management District

CALIFORNIA
AMERICAN WATER

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F 831.375.4367

August 5, 2016

John Guertin
Interim Planning Director
Monterey County Resource Management Agency
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

Re: Carmel River Cease and Desist Order, Moratorium on New Water Service or Increased Water Service Due to Change in Zoning or Use

Dear Mr. Novo:

As you know, California American Water is operating under a Cease and Desist Order (the "CDO"[1]), which was issued by the State Water Resources Control Board ("State Water Board") in October of 2009. Among other things, the CDO prohibits California American Water from supplying water from the Carmel River for new water service connections or for any increases in use at existing connections if the increase results from a change in zoning or use. To implement these prohibitions, California American Water was required to file an application with the California Public Utilities Commission ("CPUC") to institute the Moratorium on New or Expanded Water Service Connections (the "Moratorium"[2]) in our main Monterey district service territory. The Moratorium decision from the CPUC requires California American Water to deny requests for new service connections and prohibit any increased use of water at existing service addresses resulting from a change in zoning or use.

On July 19, 2016, the State Water Board issued Order WR 2016-0016 (the "Amended Order"[3]), amending certain provisions of the CDO and extending the CDO's deadline to reduce unauthorized Carmel River diversions to December 31, 2021. At that Board meeting, California American Water President Rob MacLean and numerous members of the community expressed concerns about application of the CDO's prohibitions to situations involving an intensification of use. Numerous speakers also requested that the

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State Water Board provide more flexibility to local jurisdictions in making land use decisions. Ultimately, in adopting the Amended Order, the State Water Board left the CDO provisions relating to the Moratorium unchanged, but requested that Staff meet with stakeholders over the next several months to discuss a possible solution to address community concerns. Thus, although the Moratorium remains in place, California American Water will work with State Water Board Staff, the Monterey Peninsula Water Management District, and other stakeholders to clarify provisions concerning changes in zoning or use, and intensification of use, and we will keep you apprised of any substantive or procedural changes that may arise through such discussions.

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If you have any questions about the CDO, the Moratorium or this request, please feel free to reach me at (831) 646-3291 or eric.sabolsice@amwater.com. You may also wish to contact Dave Stoldt at the Monterey Peninsula Water Management District for more information.

Sincerely,

Eric Sabolsice
Director of Operations
California American Water Coastal Division

cc: David Stoldt, General Manager
Monterey Peninsula Water Management District

CALIFORNIA
AMERICAN WATER

Eric J. Sabolsice
Director, Operations
Coastal Division
511 Forest Lodge Road, Suite 100
Pacific Grove, CA 93950
eric.sabolsice@amwater.com

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August 5, 2016

Robert A. Mullane, AICP
Community Planning & Building Director
City of Carmel-by-the-Sea
P.O. Drawer G
Carmel-by-the-Sea, CA 93921

Re: Carmel River Cease and Desist Order, Moratorium on New Water Service or Increased Water Service Due to Change in Zoning or Use

Dear Mr. Mullane:

As you know, California American Water is operating under a Cease and Desist Order (the "CDO"[1]), which was issued by the State Water Resources Control Board ("State Water Board") in October of 2009. Among other things, the CDO prohibits California American Water from supplying water from the Carmel River for new water service connections or for any increases in use at existing connections if the increase results from a change in zoning or use. To implement these prohibitions, California American Water was required to file an application with the California Public Utilities Commission ("CPUC") to institute the Moratorium on New or Expanded Water Service Connections (the "Moratorium"[2]) in our main Monterey district service territory. The Moratorium decision from the CPUC requires California American Water to deny requests for new service connections and prohibit any increased use of water at existing service addresses resulting from a change in zoning or use.

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If you have any questions about the CDO, the Moratorium or this request, please feel free to reach me at (831) 646-3291 or eric.sabolsice@amwater.com. You may also wish to contact Dave Stoldt at the Monterey Peninsula Water Management District for more information.

Sincerely,

Eric Sabolsice
Director of Operations
California American Water Coastal Division

cc: David Stoldt, General Manager
Monterey Peninsula Water Management District

Chip Rerig, City Administrator
Carmel-by-the-Sea

CALIFORNIA
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Eric J. Sabolsice
Director, Operations
Coastal Division
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Pacific Grove, CA 93950
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August 5, 2016

Mark Brodeur
Director of Community and Economic Development
City of Pacific Grove Planning Division
300 Forest Avenue, 2nd Floor
Pacific Grove, CA 93950

Re: Carmel River Cease and Desist Order, Moratorium on New Water Service or Increased Water Service Due to Change in Zoning or Use

Dear Mr. Brodeur:

As you know, California American Water is operating under a Cease and Desist Order (the "CDO"[1]), which was issued by the State Water Resources Control Board ("State Water Board") in October of 2009. Among other things, the CDO prohibits California American Water from supplying water from the Carmel River for new water service connections or for any increases in use at existing connections if the increase results from a change in zoning or use. To implement these prohibitions, California American Water was required to file an application with the California Public Utilities Commission ("CPUC") to institute the Moratorium on New or Expanded Water Service Connections (the "Moratorium"[2]) in our main Monterey district service territory. The Moratorium decision from the CPUC requires California American Water to deny requests for new service connections and prohibit any increased use of water at existing service addresses resulting from a change in zoning or use.

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If you have any questions about the CDO, the Moratorium or this request, please feel free to reach me at (831) 646-3291 or eric.sabolsice@amwater.com. You may also wish to contact Dave Stoldt at the Monterey Peninsula Water Management District for more information.

Sincerely,

Eric Sabolsice
Director of Operations
California American Water Coastal Division

cc: David Stoldt, General Manager
Monterey Peninsula Water Management District

Ben Harvey, City Manager
City of Pacific Grove

CALIFORNIA
AMERICAN WATER

Eric J. Sabolsice
Director, Operations
Coastal Division
511 Forest Lodge Road, Suite 100
Pacific Grove, CA 93950
eric.sabolsice@amwater.com

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August 5, 2016

Kim Cole
Chief of Planning/Engineering/Environmental Compliance
City of Monterey
570 Pacific Street
Monterey, CA 93940

Re: Carmel River Cease and Desist Order, Moratorium on New Water Service or Increased Water Service Due to Change in Zoning or Use

Dear Ms. Cole:

As you know, California American Water is operating under a Cease and Desist Order (the "CDO"[1]), which was issued by the State Water Resources Control Board ("State Water Board") in October of 2009. Among other things, the CDO prohibits California American Water from supplying water from the Carmel River for new water service connections or for any increases in use at existing connections if the increase results from a change in zoning or use. To implement these prohibitions, California American Water was required to file an application with the California Public Utilities Commission ("CPUC") to institute the Moratorium on New or Expanded Water Service Connections (the "Moratorium"[2]) in our main Monterey district service territory. The Moratorium decision from the CPUC requires California American Water to deny requests for new service connections and prohibit any increased use of water at existing service addresses resulting from a change in zoning or use.

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Sincerely,

Eric Sabolsice
Director of Operations
California American Water Coastal Division

cc: David Stoldt, General Manager
Monterey Peninsula Water Management District

Mike McCarthy, City Manager
City of Monterey

Hans Uslar, Assistant City Manager
City of Monterey
uslar@monterey.org

CALIFORNIA
AMERICAN WATER

Eric J. Sabolsice
Director, Operations
Coastal Division
511 Forest Lodge Road, Suite 100
Pacific Grove, CA 93950
eric.sabolsice@amwater.com

P 831.646.3291
C 831.236.1011
F 831.375.4367

August 5, 2016

Daniel Dawson
City Manager
City of Del Rey Oaks
650 Canyon Del Rey Road
Del Rey Oaks, CA 93940

Re: Carmel River Cease and Desist Order, Moratorium on New Water Service or Increased Water Service Due to Change in Zoning or Use

Dear Mr. Dawson:

As you know, California American Water is operating under a Cease and Desist Order (the "CDO"[1]), which was issued by the State Water Resources Control Board ("State Water Board") in October of 2009. Among other things, the CDO prohibits California American Water from supplying water from the Carmel River for new water service connections or for any increases in use at existing connections if the increase results from a change in zoning or use. To implement these prohibitions, California American Water was required to file an application with the California Public Utilities Commission ("CPUC") to institute the Moratorium on New or Expanded Water Service Connections (the "Moratorium"[2]) in our main Monterey district service territory. The Moratorium decision from the CPUC requires California American Water to deny requests for new service connections and prohibit any increased use of water at existing service addresses resulting from a change in zoning or use.

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Sincerely,

Eric Sabolsice
Director of Operations
California American Water Coastal Division

cc: David Stoldt, General Manager
Monterey Peninsula Water Management District

CALIFORNIA
AMERICAN WATER

Eric J. Sabolsice
Director, Operations
Coastal Division
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Pacific Grove, CA 93950
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August 5, 2016

Kurt Overmeyer
Economic Development Program Manager
City of Seaside
440 Harcourt Avenue
Seaside, CA 93955

Re: Carmel River Cease and Desist Order, Moratorium on New Water Service or Increased Water Service Due to Change in Zoning or Use

Dear Mr. Overmeyer:

As you know, California American Water is operating under a Cease and Desist Order (the "CDO"[1]), which was issued by the State Water Resources Control Board ("State Water Board") in October of 2009. Among other things, the CDO prohibits California American Water from supplying water from the Carmel River for new water service connections or for any increases in use at existing connections if the increase results from a change in zoning or use. To implement these prohibitions, California American Water was required to file an application with the California Public Utilities Commission ("CPUC") to institute the Moratorium on New or Expanded Water Service Connections (the "Moratorium"[2]) in our main Monterey district service territory. The Moratorium decision from the CPUC requires California American Water to deny requests for new service connections and prohibit any increased use of water at existing service addresses resulting from a change in zoning or use.

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Sincerely,

Eric Sabolsice
Director of Operations
California American Water Coastal Division

cc: David Stoldt, General Manager
Monterey Peninsula Water Management District

Craig Malin, City Manager
City of Seaside