



State Water Resources Control Board



Terry Tamminen
Secretary for
Environmental
Protection

Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
Mailing Address: P.O. Box 2000 ♦ Sacramento, California 95812-2000
FAX: 916.341.5400 ♦ www.waterrights.ca.gov

Arnold Schwarzenegger
Governor

MAR 17 2004

State Clearinghouse
1400 Tenth Street
Sacramento, CA 95814

3/17/2004
#25

Thom McCue
Monterey County Planning and
Building Inspection Department
2620 First Avenue
Marina, CA 93933-6205

Dear Sir or Madam:

PEBBLE BEACH COMPANY'S DEL MONTE FOREST PRESERVATION AND DEVELOPMENT PLAN – SCH# 2002011130

Division of Water Rights (Division) staff has reviewed the Draft Environmental Impact Report (DEIR) for the Pebble Beach project identified above. The document states that the direct water requirement is 355 acre-feet per annum (afa). The DEIR states that the local water purveyor, California-American Water Company (Cal-Am) is not constrained by the requirements of State Water Resources Control Board (SWRCB) Order WR 95-10 in providing this water from the Carmel River. Division staff disagrees with this statement because it lacks the necessary supporting documentation. | 1

Cal-Am has legal rights for only 3,376 afa of the 11,285 afa that it diverts from the Carmel River. In Order WR 95-10, the SWRCB exercises its discretionary enforcement capability as long as total annual diversions by Cal-Am do not exceed 11,285 afa. This should not be construed as a finding that there is a legal supply for most of the water that Cal-Am provides to its customers. During the water year October 1, 2002 through September 30, 2003, Cal-Am exceeded the 11,285 afa limit by 35 af. The Division is addressing the non-compliance issue. Thus, Cal-Am has no additional water within the 11,285 afa limit to serve new development. | 2

The issue of whether Cal-Am can legally supply water to the Pebble Beach project hinges on whether Cal-Am can divert more than 11,285 afa (the Order WR 95-10 limit) to serve the new development. The water supply information in the DEIR indicates that landscape and golf course irrigation will obtain some of its water from the Carmel Area Wastewater District (CAWD) facility. The DEIR indicates that the CAWD facility produces between 550 and 780 afa. New diversions from the Carmel River are needed, however, to provide potable water for consumptive uses for the 403 residential units, 34-unit planned unit development, 53 low-cost housing units, golf course clubhouse and related facilities. | 3

| 4

MAR 17 2004

The SWRCB is exercising its enforcement discretion to not penalize Cal-Am for excess diversions from the Carmel River as long as Cal-Am's diversions do not exceed 11,285 acre-feet per annum (afa) plus the quantity of potable water provided to Pebble Beach Company (up to 380 afa) and other sponsors under the 380 afa entitlement for use on the Del Monte Forest properties (see enclosed letters dated March 27, 1998 and October 18, 2001). This enforcement discretion will be exercised as long as the wastewater reclamation project continues to produce as much as, or more than, the quantity of potable water delivered to the Del Monte Forest property, and the reclaimed wastewater is utilized on lands within the Cal-Am service area.

Order WR 95-10 does not provide discretion to address any projects involving the use of additional output from the wastewater treatment facility, other than the 380 afa. The DEIR does not analyze how much of the 380 afa has already been allocated to other projects. The DEIR is deficient without this analysis. The DEIR needs to analyze both the quantity assigned from the 380 afa (and provide metering data to document whether already approved uses are taking more water than originally expected) and daily impacts to the Carmel River as a result of the new diversions from that source related to this project.

5

If this project, in combination with other projects, exceeds the 380 afa identified in Order WR 95-10 for use on the Del Monte Forest property, diversions in excess of 380 afa will be subject to enforcement pursuant to Water Code section 1052.

6

It is my understanding that the Monterey Peninsula Water Management District is planning to allocate additional output from the CAWD facility to local uses. Will this result in additional exchange of treated wastewater with new diversions from the Carmel River? If so, the cumulative impacts of all reasonably foreseeable new projects should be addressed in the DEIR.

7

The DEIR needs to analyze which Cal-Am diversion works will be used to supply the water to this project, as well as any local instream effects associated with additional diversion at the specific well(s). What impacts will occur to steelhead and red-legged frogs? Will additional diversion result in a cone of depression, drawdown effects, or a "dry spot" in the riverbed at the diversion works? What mitigation measures will be implemented to address any new effects to the Carmel River?

8

The DEIR should state how water will be provided for this project, should Cal-Am fail to fully legalize its Carmel River diversions.

9

The DEIR should analyze whether additional diversions will result in any violations or potential violations of annual instream flow diversion agreements between Cal-Am and the Department of Fish and Game and the NOAA Fisheries. Is a biological opinion on steelhead or red-legged frog prior to initiating new diversions?

10

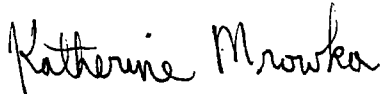
State Clearinghouse
Thom McCue

- 3 -

MAR 17 2004

If you require further assistance, I can be contacted at (916) 341-5363.

Sincerely,



Katherine Mrowka, Chief
Watershed Unit #3

Enclosures (2)

cc: Ms. Fran Farina
Monterey Peninsula Water
Management District
P.O. Box 85
Monterey, CA 93942-0085

Mr. Steven Leonard
California-American Water Company
P.O. Box 951
Monterey, CA 9394200951

Mr. David Dilworth
Helping Our Peninsula's Environment
P.O. Box 1495
Carmel, CA 93921

Mr. Stuart Somach
Somach, Simmons & Dunn
Hall of Justice Building
813 Sixth Street, Third Floor
Sacramento, CA 95814-2403



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights

1001 I Street, 14th Floor • Sacramento, California 95814 • (916) 341-5363
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 341-5400 • Web Site Address: <http://www.waterrights.ca.gov>

Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

OCT 18 2001

Mr. Ernest A. Avila
Monterey Peninsula Water
Management District
P.O. Box 85
Monterey, CA 93942-0085

Dear Mr. Avila:

PEBBLE BEACH PROJECT – USE OF RECLAIMED WASTEWATER FROM THE
CARMEL AREA WASTEWATER DISTRICT/PEBBLE BEACH COMMUNITY SERVICES
DISTRICT (CAWD) WASTEWATER RECLAMATION PROJECT - FILE 262.0 (27-01)

By letter dated October 2, 2001, you request clarification regarding use of treated wastewater produced by the CAWD project in lieu of potable water supplies for purposes of developing new projects.

The Division of Water Rights (Division) addressed this issue in our letter of March 27, 1998. The March 27 letter states that it is acceptable to transfer a maximum of 380 acre-feet per annum of potable water supplies freed up through use of treated wastewater on the Del Monte Forest property for new purposes, provided that diversions from the Carmel River do not exceed 11,285 acre-feet per year plus the quantity of potable water provided to Pebble Beach Company and other sponsors under this entitlement for use on the Del Monte Forest properties. Continual records must be maintained, on both a monthly and total annual basis, to document that (a) the new use of potable water does not exceed the historic quantity of potable water provided by the California-American Water Company (Cal-Am) to the Del Monte Forest property and (b) the quantity of treated wastewater put to beneficial use equals or exceeds the potable water use. The Monterey Peninsula Water Management District is responsible for submitting these records to the Division on a quarterly basis, until full compliance with Order WR 95-10 is achieved.

You specifically asked whether the use of a portion of the original Pebble Beach Company water entitlement from the CAWD reclamation project can be used on non-Pebble Beach Company properties (1) within the Del Monte Forest and (2) outside the Del Monte Forest. Cal-Am may distribute the new potable water supply anywhere in its service area, subject to the Carmel River diversion requirements of Order WR 95-10 (and any subsequent modifications approved by the State Water Resources Control Board) and requirements (a) and (b) above.

Mr. Ernest A. Avila

2

OCT 18 2001

Katherine Mrowka is the staff person presently assigned to this matter. If you require further assistance, Ms. Mrowka can be contacted at (916) 341-5363.

Sincerely,

ORIGINAL SIGNED BY:

Edward C. Anton, Chief
Division of Water Rights

cc: Mr. Anthony Lombardo
Lombardo & Gilles, PLC
P.O. Box 2119
Salinas, CA 93902-2119

bcc: Harry M. Schueller, EXEC
Beth Jines, CAL/EPA
Brian Haddix, CAL/EPA

KDM:llv 10/17/01

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Cal/EPA

State Water
Resources
Control Board

Division of
Water Rights

Mailing Address:
P.O. Box 2000
Sacramento, CA
95812-2000

901 P Street
Sacramento, CA
95814
(916) 657-1359
FAX (916) 657-1485



Pete Wilson
Governor

MARCH 27 1998

Mr. Darby Fuerst
Monterey Peninsula Water
Management District
P.O. Box 85
Monterey, CA 93942-0085

Mr. Larry Foy
California American Water Company
P.O. Box 951
Monterey, CA 93942-0951

Dear Sirs:

RECLAMATION PROJECT WATER AVAILABILITY – CARMEL RIVER IN MONTEREY COUNTY

In response to a November 14, 1997 request by the Del Monte Forest Property Owners organization this letter addresses the availability of 380 afa to serve development under the water entitlement granted by the Monterey Peninsula Water Management District (District) to sponsors of the Carmel Area Waste Water District (CAWD) – Pebble Beach Community Services District (PBCSD) wastewater reclamation project and its relation to SWRCB Order 95-10.

SWRCB Order WR 95-10 refers to the entitlement granted by the District and development of the Del Monte Forest property. Footnote 2 of the Order states:

“The (Wastewater Reclamation) Project will provide 800 af of reclaimed water for the irrigation of golf courses and open space in the Del Monte Forest. In return for financial guarantees, the Pebble Beach Company and other sponsors, received a 380 af potable water entitlement from the District, based upon issuance of an appropriative right permit to the District, for development within Del Monte Forest.”

The wastewater reclamation facility operated by the CAWD is presently producing more than 800 afa of reclaimed water annually for use upon golf courses and open space areas. Use of treated wastewater has reduced the potable water deliveries of California-American Water Company (Cal-Am) for this irrigation project by at least 500 afa. The SWRCB understands that improvements are being considered that may allow reduction of potable water use by the full 800 afa.



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Mr. Darby Fuerst
Mr. Larry Foy

-2-

MARCH 27 1998

The SWRCB has recognized that the Pebble Beach Company and other sponsors were project participants in, and assisted in funding, the wastewater reclamation project which enabled Cal-Am to reduce its delivery of potable water to the Del Monte Forest property and thereby reduce the demand on the Carmel River by at least 500 afa and potentially 800 afa. Upon completion of the development project on the Del Monte Forest property, 380 afa will be diverted from the Carmel River by Cal-Am for delivery to these lands. Thus, there will be no net increase in Carmel River diversions in the future over the level of past documented diversions as a result of developing these projects. As a result of the reclamation project and especially during the interim period while the Del Monte Forest property is being developed, the net diversion from the Carmel River to serve the Del Monte Forest properties will be less than the level that would have occurred if the wastewater reclamation project had not been developed. Thus, under Footnote 2 of Order WR 95-10, the 380 afa is available to serve these projects.

As a result, Order WR 95-10 does not preclude service by Cal-Am to the Del Monte Forest property under the 380 afa entitlement granted by the District. As you are aware, the SWRCB is requiring Cal-Am to maintain a water conservation program with the goal of limiting annual diversions from the Carmel River to 11,285 afa until full compliance with Order WR 95-10 is achieved. While Cal-Am has been exceeding the limit, it is not the intent of the SWRCB to penalize the developers of the wastewater reclamation project for their efforts to reduce reliance upon the potable water supply via utilization of treated wastewater.

Thus, the SWRCB will use its enforcement discretion to not penalize Cal-Am for excess diversions from the Carmel River as long as their diversions do not exceed 11,285 afa plus the quantity of potable water provided to Pebble Beach Company and other sponsors under this entitlement for use on these lands. This enforcement discretion will be exercised as long as the wastewater reclamation project continues to produce as much as, or more than, the quantity of potable water delivered to the Del Monte Forest property, and the reclaimed wastewater is utilized on lands within the Cal-Am service area.

Footnote 2 of Order WR 95-10 deals only with the issue of water use for purposes of projects in the Del Monte Forest. Consequently, the order does not provide discretion to address any projects involving the use of the unassigned 420 afa (800 afa minus the 380 afa identified in the footnote equals 420 afa) developed by the wastewater treatment facility.

In order to accurately document that only the historic level of diversion has been maintained, the District is requested to advise the SWRCB of both the quantity of potable water obtained from Cal-Am on a monthly and total annual basis to serve these lands. Information on both monthly

Mr. Darby Fuerst
Mr. Larry Foy

-3-

MARCH 27 1998

and total annual production and beneficial use from the wastewater treatment project should also be included in the submittal. This information should be submitted quarterly, and the annual data should document use during the water year. The water year begins on October 1 of one year and ends on September 30 of the subsequent year.

If you have any questions regarding this matter, I can be contacted at (916) 657-1359.

Sincerely,

ORIGINAL SIGNED BY
EDWARD C. ANTON

Edward C. Anton, Chief
Division of Water Rights

cc: Mr. Robert C. Gross
Del Monte Forest Property Owners
P.O. Box 523
Pebble Beach, CA 93953

bcc: Walt Pettit