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

Southwest Region  
 777 Sonoma Ave, Rm 325  
 Santa Rosa, California 95404

In response Refer To:

July 1, 2004 151416SWR04SR9234:WH

Mr. Anthony L. Lombardo  
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Post-It® Fax Note 7671		Date 7/6/04	# of pages 3
To RICH WALTER		From Thom McCue	
Co./Dept.		Co.	
Phone #		Phone # 831/433-8961	
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Dear Mr. Lombardo:

Thank you for your June 15, 2004 letter that provides additional information concerning future water supply for the Pebble Beach Company's Del Monte Forest Preservation and Development Plan (Del Monte Forest Plan). Your letter discusses the origin of the 355 acre-foot per year (AFY) water entitlement provided to you by Monterey Peninsula Water Management District (MPWMD), and it describes the Phase I Carmel Area Wastewater District (CAWD)/Pebble Beach Community Services District (PBCSD) Wastewater Reclamation Project. Your letter also provides important information about Pebble Beach Company's plan for a Phase II Wastewater Reclamation Project.

On April 13, 2004, the National Marine Fisheries Service (NOAA Fisheries) provided the County of Monterey Planning and Building Inspection Department with a letter expressing concern about the potential adverse effects of the Del Monte Forest Plan on steelhead trout in the Carmel River. That project includes development of a new 18-hole golf course with clubhouse and visitor-serving suites; relocation of the existing equestrian center; construction of 91 visitor-serving units, additional meeting space, a new underground parking lot, and new driving range/golf teaching facility at Spanish Bay; construction of 63 visitor-serving units, additional meeting and hospitality space, and new underground parking structure at the Lodge at Pebble Beach; creation of 33 residential lots in various locations; construction of 12 employee housing units near Spanish Bay and 48 at the Pebble Beach Company's Corporation Yard; road, infrastructure and trail improvements; preservation and conservation of 500 acres of open space; and a proposal to amend prior permits/conservation easements issued to the applicant.

The Draft Environmental Impact Report (DEIR) states that water for this facility will be derived from a claimed water entitlement of 355 AFY that was obtained by Pebble Beach Company in return for financial support for the CAWD/PBCSD Wastewater Reclamation Project (Phase I). According to the DEIR, as a result of this additional diversion, the proposed "project would increase withdrawals by Cal-Am from the Carmel River aquifer and/or the Seaside aquifer relative to a current (2002) baseline."



As described in our April 13<sup>th</sup> letter to Monterey County, the "environmental setting" for this proposed additional diversion is decades of contentious legal and administrative procedures related to efforts to reduce excessive, unauthorized diversions from the Carmel River by Cal-Am. Those diversions annually dewater 7 to 8 miles of the lower Carmel River with resulting significant impacts to threatened South-Central California Coast steelhead and other natural resources.

Your June 15 letter's descriptions of the Phase I CAWD/PBCSD Wastewater Reclamation Project and plans for a Phase II Wastewater Reclamation Project are useful and help provide perspective for the environmental assessment of the effects of the proposed project diversions on steelhead in the Carmel River. However, we remain concerned about the potential adverse effects of increased diversions associated with the "water entitlement" of 355 AFY provided by MPWMD to Pebble Beach Company. We also question whether this "water entitlement" constitutes a valid basis of water right. California water right law assigns the State Water Resources Control Board (SWRCB) exclusive authority for granting legal water rights. A footnote in SWRCB Order 95-10 erroneously states that MPWMD issued a water entitlement to Pebble Beach and other water reclamation project sponsors, based upon issuance of an appropriative right permit to the District. The District had no such water right permit. Nevertheless, SWRCB stated in its March 27, 1998 letter to MPWMD that it *"would 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 afu plus the quantity of potable water provided to Pebble Beach Company and other sponsors under this entitlement for use on these lands."* In its April 21, 2004 letter to you, SWRCB stated *"this enforcement discretion will continue to be exercised as long as the amount of treated wastewater delivered for use meets or exceeds the quantity of potable water delivered under the entitlement."* What is clear is that highly excessive water diversions are adversely affecting threatened steelhead, the diversions are done without a valid basis of right, and SWRCB is exercising enforcement discretion for those diversions with hopes that Cal-Am can develop an environmentally benign alternative water supply.

In its May 10, 2004 letter to you, SWRCB responded to your request for them to acknowledge that the environmental effects of use of the 380<sup>1</sup> acre-feet "entitlement" has already been studied in a prior environmental impact report prepared for the reclamation project. SWRCB stated that it did not have the environmental document for Phase I of the reclamation project and that the Phase II documents, which SWRCB had, did not discuss potential impacts of the project on public trust resources of the Carmel River. In its May 10 letter, the SWRCB suggests that the final EIR for the Del Monte Forest Plan should address environmental effects of the water diversions and mitigation measures deemed necessary.

The two-phase wastewater reclamation project clearly benefits Carmel River resources. However, it is unclear whether Phase II of the wastewater reclamation project together with the Del Monte Forest Plan will collectively allow Cal-Am to limit its diversions to not more than 11,285 AFY. NOAA Fisheries is strongly supportive of the intent of SWRCB Order 95-10 to reduce the adverse effects of excessive diversions from the Carmel River. If the Phase II Water Reclamation Project is constructed jointly with the Del Monte Forest Project, and as a result, the combined projects negate the need for additional diversions associated with the "water entitlement", then we would have no misgivings about the project.

Our objective is to reduce the amount of unauthorized, environmentally deleterious diversions from the

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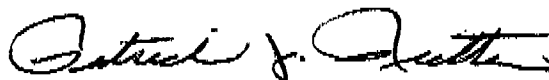
<sup>1</sup>SWRCB Order 95-10 indicates that a total entitlement of 380 AFY were given to Pebble Beach and other sponsors. The Del Monte Forest Plan EIR sites an entitlement of 355 AFY for Pebble Beach Company.

Carmel River. As indicated in the DEIR for the Del Monte Forest Plan, the total volume of water diverted by Cal-Am would increase from 2002 levels as a result of this project. However, your June 15 letter suggests that these increases would be negligible if Pebble Beach develops Phase II of the Wastewater Reclamation Project. Specifically, you state, "By eliminating the use of potable water for golf course irrigation, the Phase II Project will further reduce existing potable water use by an average of two hundred seventy-five (275) AFY compared to current conditions." You also state, "Clearly, with the Phase II Project, pumping levels which have already been significantly reduced as a result of the Phase I Project will be further reduced to below existing conditions, resulting in no negative environmental impacts on the Carmel River Resource System." If this is true then we have no objection to the combined projects (Del Monte Forest Plan and the Phase II Wastewater Reclamation Project), assuming the Phase II project is built in conjunction with the Del Monte Forest Plan Project. In your letter you stated, "even though my client has no legal obligation to do so, PBCo has agreed to accept a condition of project approval that requires it to finance the Phase II Project to assure that these potable water savings are realized." We encourage Pebble Beach Company to include the Phase II wastewater reclamation project as an element of the Del Monte Forest Plan Project, such that with construction of the full project, the total volume of water diverted by Cal-Am would not increase from 2002 levels as a result of the Del Monte Forest Plan Project. If the Phase II Project cannot be included as an element of the Del Monte Forest Plan Project, we will recommend to the County of Monterey that the financing and construction of the Phase II Project be a permit condition for that project.

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Again thank you for the helpful additional information concerning the relationship of the two-phase Wastewater Reclamation Project and the Del Monte Forest Plan Project. If you have any questions or comments concerning the contents of this letter, please contact Dr. William Hearn at (707) 575-6062.

Sincerely,



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Supervisor, Northern California  
Protected Resources Division

cc: J. Lecky, NOAA Fisheries  
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