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**BEFORE THE STATE WATER  
RESOURCES CONTROL BOARD**

In the Matter of the State Water Resources )      Hearing Date: September 24, 2007  
Control Board (State Water Board) )  
Hearing to consider Monterey Peninsula )      Carmel River in Monterey County  
Water Management District's (MPWMD) )  
Petitions to Change Permits 7130B and )  
20808 (Applications 11674B and 27614) )

**EXHIBIT HS-7**

**MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**

**Comment letter from California Department of Fish & Game on Draft EIR  
And MPWMD responses to comments in Final EIR on ASR Project**

Letter 2



State of California - The Resources Agency  
DEPARTMENT OF FISH AND GAME  
<http://www.dfg.ca.gov>

ARNOLD SCHWARZENEGGER, Governor

POST OFFICE BOX 47  
YOUNTVILLE, CALIFORNIA 94690  
(707) 944-5500



May 22, 2006

Henrietta Stern, Project Manager  
Monterey Peninsula Water Management District  
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Email: [henri@mpwmd.dst.ca.us](mailto:henri@mpwmd.dst.ca.us)

Dear Ms. Stern:

Monterey Peninsula Water Management District (MPWMD)  
Phase 1 Aquifer Storage and Recovery Project  
SCH # 2004121065

Thank you for the extended opportunity to comment on this project. The Department of Fish and Game (DFG) has reviewed the document for the subject project. Additionally, staff recently met with you on May 17, 2006 to discuss resolution of concerns about the potential impacts to public trust resources resulting from diversions from the Carmel Basin. These concerns had been previously voiced in 2002 and 2005 in Protests to MPWMD's Petitions for Change filed with the SWRCB. This letter will articulate our latest position on these matters, as well as outline some basic procedural issues related to other aspects of your Project.

2-1

The adverse impacts to public trust resources from diversions within the Carmel Basin are well documented. DFG voiced three specific areas of concern in its previous communications with the State Water Resources Control Board and MPWMD with regard to Aquifer Storage and Retrieval (ASR) and the impacts of this proposed diversion.

First, that the project proposes to divert water from this basin for the ASR project in the Seaside Groundwater Basin when water use in that basin has not yet been adjudicated to provide any assurance that water transferred and stored there will be available for return to the Carmel River Basin. At this time, it is our understanding that MPWMD can now guarantee that their diversion to the Seaside Groundwater Basin is actually secure storage of the water, sufficient to reserve it for the benefit of the fish and wildlife of the Carmel River and MPWMD's customers through reduced dry season diversion pumping rates.

2-2

*Conserving California's Wildlife Since 1870*



Ms. Henrietta Stern  
 May 22, 2006  
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Second, DFG was concerned that the project proposed the elimination of essential permit terms in water applications (WA) 11674B and WA 27614 (Permits 7130B and 20808). The elimination of some of these permit conditions would cause a reduction in resource protection. This issue is currently being addressed in ongoing meetings with MPWMD to resolve our water right protest and allow acceptable changes.

2-3

Finally, DFG is concerned that groundwater recharge in the Seaside Groundwater Basin must not be used to address overdraft problems there, but that diversions from the Carmel taken to ASR storage during higher flow months be used to reduce pumping needed in the Carmel system in the lower flow months. After recent discussions with MPWMD staff, DFG believes that MPWMD can guarantee that ASR diversions will be utilized to offset pumping from the Carmel River system during the dry months.

2-4

Please be advised this project may result in changes to fish and wildlife resources as described in the California Code of Regulations, Title 14, Section 753.5(d)(1)(A)-(G). Therefore, a de minimis determination is not appropriate, and an environmental filing fee as required under Fish and Game Code Section 711.4(d) should be paid to the Monterey County Clerk on or before filing of the Notice of Determination for this project.

2-5

For any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a stream or lake, or use material from a streambed, DFG may require a Streambed Alteration Agreement (SAA), pursuant to Section 1600 et seq. of the Fish and Game Code, with the applicant. Actions connected to the installation of the temporary water pipeline wherein any portion of any channel is disturbed are subject to this requirement. This includes horizontal directional drilling under the channel, trenching, and removal of riparian vegetation adjacent to riparian areas. Issuance of SAAs is subject to the California Environmental Quality Act (CEQA). DFG, as a responsible agency under CEQA, will consider the CEQA document for the project. The CEQA document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for completion of the agreement. In the sections that defer the specific restoration of impacted stream features to a future effort, DFG may not be able to use the existing EIR to fulfill its obligations under CEQA. Such projects may therefore require MPWMD to prepare additional CEQA documents as a lead agency.

2-6

The District acknowledges temporary and permanent impacts to sensitive biological communities and several special status plant and animal species, and defers the mitigation of these impacts to the *Installation-Wide Multispecies Habitat*

2-7

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Page 3

**Management Plan for Former Fort Ord (HMP)**, which as of this date has not been implemented. DFG and other resource agencies have been engaged in the development of a Habitat Conservation Plan (HCP) and base-wide California Endangered Species Act (CESA) permit to provide endangered species take authorization based on the HMP. If the District wishes to commence any activities that may impact any of the State or Federally listed species covered in the HMP before the HCP and CESA permit are finalized, it would first have to obtain necessary take authorizations.

2-7  
cont.

The District correctly notes in Mitigation Measure BIO-4 the need to avoid disturbance to bird nests, pursuant to the Migratory Bird Treaty Act and California Fish and Game Code Section 3503. Please note that this constraint must be considered during inspection, maintenance, and cleaning operations, as well as during construction.

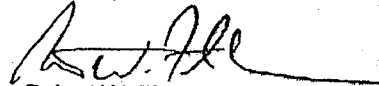
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To obtain further information about the SAA notification process, please access our website at [www.dfg.ca.gov/1800](http://www.dfg.ca.gov/1800); or to request a notification package, contact the Streambed Alteration Program at (707) 944-5520.

If you have any questions about these comments, please contact Mr. Serge Glushkoff, Environmental Scientist, at [SGlushkoff@dfg.ca.gov](mailto:SGlushkoff@dfg.ca.gov) or (707) 944-5597; Ms. Linda Hanson, Staff Environmental Scientist, at [LHanson@dfg.ca.gov](mailto:LHanson@dfg.ca.gov) or (707) 944-5562; or Mr. Scott Wilson, Habitat Conservation Supervisor, at (707) 944-5584.

2-9

Sincerely,



Robert W. Floerke  
Regional Manager  
Central Coast Region

cc: State Clearinghouse

## Comment Letter 2—California Department of Fish and Game, May 22, 2006

### Response to Comment 2-1

The comment is introductory. No response is required.

### Response to Comment 2-2

The commenter's understanding is correct. The Superior Court decision in the Seaside Basin Adjudication confirms that water stored in the Seaside Groundwater Basin may be recovered and used by the party that stores the water, including by injection. This means that the water stored by MPWMD by injection into the Seaside Groundwater Basin as part of the Phase 1 ASR Project will be available for use by MPWMD. Because the Proposed Project operation is to pump stored water during dry periods and to cause pumping that would otherwise occur from Carmel River system to be reduced, the commenter's concern is addressed.

### Response to Comment 2-3

MPWMD and the commenter (CDFG) have been meeting to negotiate mutually acceptable resolution of the commenter's protests to MPWMD's water rights petitions before the SWRCB to facilitate the Phase 1 ASR Project. The majority of commenter's concerns have been resolved, and MPWMD anticipates that the remainder will be resolved by the time the ASR Project EIR/EA is certified by the MPWMD Board of Directors.

### Response to Comment 2-4

MPWMD agrees that the water diverted from the Carmel River during high-flow periods by Cal-Am for injection into the Seaside Basin as part of the MPWMD Phase 1 ASR Project should not be used to resolve the overdraft condition in the Seaside Basin and agrees that Cal-Am should be required to reduce its diversions from the Carmel River during low-flow periods when injected water in the Seaside Basin is available for recovery. The commenter's concern is similar to concern expressed by NOAA Fisheries (see Response to Comment 6-3). To address these concerns, MPWMD in cooperation with CDFG and NOAA Fisheries, has developed a set of explicit rules to govern the proposed recovery operations. These rules "tie" the amount of water that can be recovered in a year to the amount of water that was injected during the year plus injected water in storage and provide an explicit accounting procedure to track water injected, stored, and recovered over time. These rules will be included as a condition in

the new water right for the Phase 1 ASR Project that will be issued by the SWRCB and held jointly by Cal-Am and MPWMD.

The determination of the amount of water available for recovery will be made at the end of May each year. In the simulation, the determination would be made on June 1 each year. In real-time, it is envisioned that the determination will be made in May by the Memorandum of Agreement (MOA) group (Cal-Am, CDFG, NOAA Fisheries, and MPWMD) as part of the MOA process. In the simulation, once the determination is made, the daily amount of injected water that is targeted for recovery is taken *before* Cal-Am operates its Carmel Valley wells to meet customer demand. This logic ensures that Cal-Am will reduce its diversions from the Carmel River during the low-flow season when injected water is being recovered for Cal-Am customer use and provide improved flow conditions for the Carmel River steelhead. In real-time, it is envisioned that the targeted recovery amounts that have been determined will be incorporated into the *Quarterly Water Supply Strategy and Budgets* for Cal-Am that the MOA develops each year in September, December, March, and June. By including the monthly recovery targets from the Seaside Basin in the budgets, Cal-Am's diversions from the Carmel River during the low-flow season can be reduced accordingly.

## Response to Comment 2-5

The comment does not address the adequacy of the draft EIR/EA. No response is required.

## Response to Comment 2-6

The Proposed Project does not involve the installation of a water pipeline or any construction of new facilities that would result in channel disturbance, but would instead utilize existing facilities. Therefore, the Proposed Project would not require a streambed alteration agreement (SAA).

## Response to Comment 2-7

The U.S. Army obtained a take authorization for 250 acres of projects that included the lands to be occupied by the ASR Project and the Cal-Am temporary pipeline. Any action will be addressed by the Biological Opinions (BOs) obtained by the Army from the USFWS on March 30, 1999, October 22, 2002, and March 14, 2005.