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8 **STATE OF CALIFORNIA**
9 **STATE WATER RESOURCES CONTROL BOARD**

10 * * *

11 **In Re:**)
12 **Consideration of a Draft Cease and Desist**)
13 **Order Against California American Water**) **CLOSING BRIEF OF**
14 **Company's Diversion From Carmel River**) **SAND CITY**
15 **Monterey County**)
16)
17)
18)
19)
20)

21 **INTRODUCTION**

22 On May 13, 2008, the Hearings Officers in this matter issued a Ruling in this matter
23 which states that the State Water Resources Control Board ("**State Water Board**") may consider
24 including a ban on new service connections in a cease and desist order.¹ For the reasons stated
25 in the Joint Closing Brief of the Monterey Peninsula Water Management District and the Seaside
26 Watermaster Board on file herein, Sand City believes the State Water Board should deny the
27 request of the Prosecution Team and refuse to issue a CDO herein. However, assuming
28 *arguendo*, that the State Water Board does issue a cease and desist order ("**CDO**") in this matter,
that CDO cannot include a ban on new service connections in Sand City.

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30 ¹ RULINGS ON PROCEDURAL ISSUES INVOLVING THE CONSIDERATION OF A CEASE AND DESIST
ORDER AGAINST CALIFORNIA AMERICAN WATER (CAL AM) FOR UNAUTHORIZED DIVERSION OF
WATER FROM THE CARMEL RIVER IN MONTEREY COUNTY, section 1.2 Remedies for Violation

1 **ARGUMENT**

2 **I. The Sand City Desalination Project.**

3 Several witnesses have testified in these proceedings concerning the desalination project
4 presently being constructed in Sand City. Evidence introduced by the Prosecution Team and
5 others during the hearings shows that upon completion, the Sand City desalination facility will
6 deliver 300 acre feet of potable water on an annual basis (“AFA”) to the California American
7 Water Company (“CAW”) Monterey system.² In his written testimony presented during Phase
8 II of the hearings, Prosecution Team witness Mark Stretars described the use of the water to be
9 produced by the Sand City desalination facility as follows:

10 “The Sand City desalination plant operated by Cal-Am will produce 300 AFA of
11 which Cal-Am will initially make use of the majority of the water. However, over
12 time as new development occurs in Sand City, this amount will be reduced to a
13 defined contract amount of 94 AFT (PT-50).”³

14 **II. Reliance on the State Water Board Opinion.**

15 In 2005, the California Coastal Commission unanimously approved a Coastal
16 Development Permit for the construction and operation of the Sand City desalination project.⁴
17 As initially permitted in 2005, the project was not intended to be connected to CAW’s Monterey
18 system.⁵

19 The Coastal Commission’s approval encouraged the Sand City desalination project to be
20 part of the solution to the region’s water shortage. Knowing that the desalination facility would
21 be capable of producing more water than the City could immediately use, the City sought advice
22 from the State Water Board as to whether water produced by the facility could be introduced into
23 CAW’s Monterey system in order to help offset pumping from CAW’s existing sources on an
24 immediate basis.

25 In January of 2006, the State Water Board has issued an opinion stating that the
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28 ² Exhibit PT-50.

³ Exhibit PT-49, p. 2.

⁴ Testimony of Steve Matarazzo, Phase II, July 24, 2008, p. 340.

⁵ Testimony of Steve Matarazzo, Phase II, July 24, 2008, p. 341.

1 stating that the introduction of water produced by Sand City's desalination project into CAW's
2 Monterey system and delivery of that water to new service connections in Sand City would not
3 violate its Order 95-10.⁶ Acting in reliance on that opinion, Sand City proposed to change its
4 desalination project to connect the Sand City Desalination facility directly to CAW's Monterey
5 system. The City then undertook additional environmental review for the changes to the original
6 project as required by the California Environmental Quality Act, and sought and obtained an
7 amendment to the Coastal Development Permit for the project from the California Coastal
8 Commission and obtained all necessary approvals from the Monterey Peninsula Water
9 Management District to connect the City's desalination facility to CAW's Monterey system. In
10 further reliance on that opinion, Sand City entered into an agreement with CAW whereby CAW
11 would take all the water produced by the desalination facility and deliver up to 206 acre feet of
12 water to new service connections in Sand City over time.⁷ Finally, the City acted in reliance on
13 the State Water Board's opinion when it contracted for the final design and the construction of
14 the Sand City desalination facility.⁸

15 As Mr. Matarazzo explained in his testimony before the Hearings Officers, the Sand City
16 desalination project represents a very significant financial undertaking for this small City. The
17 City's goal in undertaking the project was to develop a new source of water supply in order to
18 implement its Redevelopment Plan.⁹ That goal will be satisfied by the requirements of the
19 permits issued for the Sand City desalination project. Once the Sand City desalination plant
20 becomes operational early next year, those permits require CAW to make up to 206 acre feet of
21 water available for new service connections in Sand City.¹⁰

22 The opinion issued by the State Water Board referred to above would have allowed all
23 300 acre feet of the water produced by the Sand City desalination facility to be made available
24 for new service connections in Sand City.¹¹ However, the City did not propose to use the entire
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26 ⁶ Exhibit Sand City-2.

27 ⁷ Exhibit PT-50.

28 ⁸ Testimony of Steve Matarazzo, Phase II, July 24, 2008, pps. 338-344; Exhibit SC-2.

⁹ Testimony of Steve Matarazzo, Phase II, July 24, 2008, pps. 338-344.

¹⁰ Exhibit Sand City-2.

¹¹ *Ibid.*

1 output from its desalination facility for new service connections in Sand City. Rather, the City
2 offered to replace the 94 acre feet of water it now takes from existing CAW sources with 94 acre
3 feet of water to be produced by its new desalination facility. Both the California Coastal
4 Commission and the Monterey Peninsula Water Management District conducted a thorough
5 review of the City's proposal. Both agencies recognized the environmental benefits of replacing
6 Sand City's existing source of water supply.¹²

7 **CONCLUSION**

8 Sand City urges the State Water Board not to act in contravention of its January 2006
9 opinion. Both the City and all other agencies responsible for the permitting of this
10 environmentally beneficial project have relied on that opinion. If the State Water Board's action
11 in this matter imposes a ban on new CAW service connections in Sand City, the action will
12 eliminate all environmental benefits of the Sand City desalination project. Specifically, such
13 action would eliminate the ability of CAW to permanently replace 94 acre feet of water from its
14 existing sources of supply with 94 acre feet of water produced by the Sand City desalination
15 facility. Moreover, such action would eliminate the ability of CAW to replace up to an
16 additional 206 acre feet of water from those existing sources of supply with 206 acre feet of
17 water produced by the Sand City desalination facility for until that water is needed for
18 redevelopment in Sand City.

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20 Dated: October 8, 2008.

21 Respectfully submitted,

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24 James G. Heisinger, Jr.
25 City of Sand City
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¹² Testimony of Steve Matarazzo, Phase II, July 24, 2008, pps. 338-344.