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

10 **In Re:**)
11 **Consideration of a Draft Cease and Desist**)
12 **Order Against California American Water**) **DECLARATION OF STEVE**
13 **Company's Diversion From Carmel River in**) **MATARAZZO**
14 **Monterey County**)
15) **Hearing Dates:**
16) **July 23, 24 and 25, 2008**
17)
18)
19)
20)

21 I, Steve Matarazzo declare:

- 22 1. I am the City Administrator and Community Development Director of Sand City.
- 23 2. Sand City is now constructing a brackish water desalination facility which will
24 produce 300 acre feet of potable water per year. Construction of the facility is scheduled for
25 completion this fall. Following a testing period, the facility is scheduled to deliver water to the
26 California American Water Company system during the first quarter of 2009.
- 27 3. Following issuance of SWRCB Order No. WR 95-10, Sand City undertook to develop
28 a municipal water supply utilizing a shallow brackish water aquifer located in the Aromas Sands
formation of the Seaside Groundwater Basin. In order to avoid uncertainties regarding the
environmental effects of the project, the City Council established a basic design goal for the
project which requires the concentrate solution derived from the desalination process not to

1 exceed the salinity of seawater in Monterey Bay when the concentrate is injected back into beach
2 sands. Extensive hydrological testing concluded that this goal could be met by limiting the
3 potable water produced by the facility to 300 acre feet per year. The Environmental Impact
4 Report certified for the project concluded that the Sand City desalination facility will have no
5 adverse environmental effects.

6 4. The California Coastal Commission unanimously approved the Sand City
7 desalination project in May of 2005. As approved by the Coastal Commission, the project would
8 have had the beneficial effect on Carmel River of replacing the 94 acre feet of water from the
9 California American Water Company system which is presently used in Sand City with water
10 from the new desalination facility.

11 5. California American Water Company recognized it could increase the beneficial effect
12 of the Sand City project. By connecting the desalination facility to California American's
13 system as an additional source of supply, diversions could be decreased by the full production
14 capacity of the desalination facility, or an additional 206 acre feet per year.

15 6. Following approval of the Sand City project by the Coastal Commission, California
16 American Water Company sought advice from the State Water Resources Control Board
17 concerning whether Order WR 95-10 would allow the Company to take the entire production
18 capacity from the Sand City desalination facility into its Monterey system and commit to make
19 that production available for new connections in Sand City as the City grew over time.

20 7. On January 31, 2006, the Executive Director of the State Water Resources Control
21 Board issued an opinion letter to California American Water Company stating that Order WR
22 95-10 allowed California American Water Company could take the entire production of the Sand
23 City desalination facility into its Monterey system and make that production available for new
24 connections in Sand City over time. A true copy of that letter is attached hereto marked Exhibit
25 "A" and by this reference incorporated herein.

26 8. On March 27, 2006, the Judgment was entered in the case of *California American*
27 *Water v. City of Seaside, et al* (No. M66343, Superior Court Monterey County). The Judgment
28 adjudicated and limited rights to produce groundwater from the Seaside Groundwater Basin and

1 ordered a physical solution for the perpetual management and protection of the Basin. The
2 Judgment awarded Sand City the exclusive right to produce brackish water from the Aromas
3 Sands formation of the Seaside Groundwater Basin for the purpose of supplying the City's
4 proposed desalination facility.

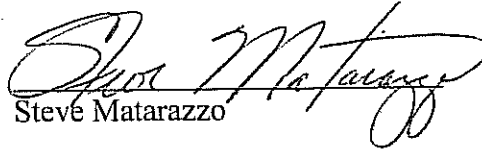
5 9. In reliance on both the Judgment in *California American Water v. City of Seaside, et*
6 *al.* giving Sand City the exclusive right to produce brackish water from the Seaside Groundwater
7 Basin, and the opinion of the State Water Resources Control Board allowing California
8 American Water Company to take the entire production from the Sand City desalination facility
9 into its Monterey system and make that production available for new connections in Sand City
10 over time, Sand City undertook to redesign its desalination project from the original design for a
11 an independent water supply for the City to that of an additional source of supply for California
12 American's water system for the Monterey Peninsula. The City prepared an Addendum to the
13 EIR previously certified for the project describing the change in design. The California Coastal
14 Commission then acted to approve an amendment to the Coastal Permit for the project allowing
15 the change in design.

16 10. Following preparation of the Addendum to the EIR and approval of the amendment
17 to the Coastal Permit for the project, the Monterey Peninsula Water Management District
18 adopted its Ordinance no. 132 creating the Sand City Water Entitlement. The Sand City Water
19 Entitlement allows new connections in Sand City only to use up to 206 acre feet of water over
20 time; *provided, that*, the Sand City desalination facility produces 300 acre feet of water each year
21 and delivers that water to the California American Water Company system.

22 11. In reliance on Ordinance no. 132 and associated connection permits approved by the
23 Monterey Peninsula Water Management District, the City undertook to construct its desalination
24 project and leased the right to produce and take 300 acre feet of water per year from the facility
25 to California American Water Company.
26 capacity of the Sand City desalination facility in Sand City.

27 I declare under penalty of perjury under the laws of the State of California that the
28 foregoing is true and correct, and that if called as a witness I can testify competently thereto.

Executed this 9th day of July, 2008 at Carmel, California.


Steve Matarazzo

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State Water Resources Control Board



Alan C. Lloyd, Ph.D.
Agency Secretary

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Arnold Schwarzenegger
Governor

In Reply Refer
to:334:KDM:262.0 (27-01)

JAN 31 2006

Steve Leonard
Vice President/Manager
California American Water Company
P.O. Box 951
Monterey, CA 93942-0951

CITY OF SAND CITY

FEB 03 2006

RECEIVED

Dear Mr. Leonard:

CALIFORNIA AMERICAN WATER COMPANY (CAL-AM) PROPOSED PURCHASE OF WATER PRODUCED BY THE SAND CITY DESALINATION FACILITY, COMPLIANCE WITH ORDER WR 95-10, FILE 262.0 (27-01)

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) has reviewed the proposed development of a 300 acre-feet (af) capacity desalination facility by the City of Sand City (Sand City) that will utilize a non-potable brackish water aquifer in the Seaside groundwater basin as the source water. The review focused on whether Cal-Am can utilize the water produced by Sand City without conflicting with condition 2 of Order WR 95-10.

Condition 2:

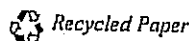
Cal-Am shall diligently implement one or more of the following actions to terminate its unlawful diversions from the Carmel River: (1) obtain appropriative permits for water being unlawfully diverted from the Carmel River, (2) obtain water from other sources of supply and make one-for-one reductions in unlawful diversions from the Carmel River, provided that water pumped from the Seaside aquifer shall be governed by condition 4 of this Order not this condition, and/or (3) contract with another agency having appropriative rights to divert and use water from the Carmel River.

Condition 4:

Cal-Am shall maximize production from the Seaside aquifer for the purpose of serving existing connections, honoring existing commitments (allocation), and to reduce diversions from the Carmel River to the greatest practicable extent. The long-term yield of the basin shall be maintained by using the practical rate of withdrawal method.

EXHIBIT "A"

California Environmental Protection Agency



JAN 31 2006

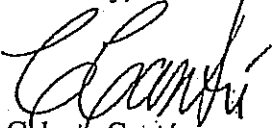
Based on condition 2, diversions from the Seaside aquifer are not subject to the requirement that they be used to offset illegal diversions from the Carmel River by Cal-Am. In accordance with condition 4, Cal-Am is cautioned that any new diversions from the Seaside aquifer should not create nor worsen any overdraft of the Seaside groundwater basin. As the purchaser of the water supply, Cal-Am is expected to comply with condition 4 of Order WR 95-10 regarding this new water supply.

The Division anticipates that the proposed new project will need to be operated in compliance with any Court order in the pending adjudication of the Seaside groundwater basin. Nothing in this correspondence should be construed as authorization for a project that otherwise would conflict with any findings in the adjudication.

Sand City's November 21, 2005 letter states that Cal-Am intends to purchase all of the 300 af and will then reduce pumping from the Carmel River by a like amount. As Sand City grows and utilizes the product water from the desalination facility, less water will be available to offset Carmel River diversions. Cal-Am must comply with Order WR 95-10, including the requirement to terminate its unlawful diversions from the Carmel River. Sand City's proposed project will not be counted toward offsetting illegal diversions because it only temporarily reduces Carmel River diversions and is not a permanent solution. Should a portion of this water supply be permanently dedicated to offsetting Carmel River diversions in the future, this opinion may be changed to reflect the new information.

Katherine Mrowka is the senior staff person assigned to this matter, and she can be contacted at (916) 341-5363.

Sincerely,



Celeste Cantu
Executive Director

cc: Mr. Kelly Morgan
City Administrator
City of Sand City
1 Sylvan Park
Sand City, CA 93955