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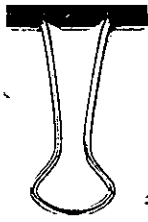
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November 2, 2010

TO: Board of Directors, PVWMA
CC: General Manager
FROM: Tony Condotti, General Counsel
RE: Action Item 9A: Consider Request for Exemption from Ordinances 98-01 and 98-02 to Allow Aromas Water District Connection to Oakridge and Via del Sol Subdivisions

Although the legal and factual basis for approving the proposed request from Aromas Water District ("AWD") is thoroughly presented in the agenda report and supporting documentation, I write for the limited purpose of addressing the legal implications of the proposed agreement vis-à-vis the export prohibitions of Ordinances 98-01 and 98-02. As the staff report correctly notes, while Ordinance 98-01 allows the Board to waive the export prohibition if the Board finds that doing so is necessary to preserve the health and/or safety of individuals living outside the Agency boundaries, Ordinance 98-02 contains no such exemption. However, it is important to note that a primary source of AWD's water is a production well located along San Juan Road near to but outside the Agency's jurisdictional boundaries. In 2003, in view of a potential hydrologic connection between the new well and the Pajaro groundwater basin, the Agency and AWD entered in to an agreement (a copy of which is attached hereto) pursuant to which AWD agreed to pay augmentation charges on water extracted from the San Juan Road well, and also agreed that the well would be "subject to the export prohibitions of Ordinance 98-01." However, the agreement made no reference to Ordinance 98-02. That fact is important, because to the extent that it applies to water produced by AWD from sources outside the Agency boundaries, the Agency's prohibition on exporting water from the Agency boundaries is essentially the result of a compromise struck by AWD and the Agency in the 2003 agreement, and does not necessarily arise directly from either Ordinance 98-01 or 98-02. In my opinion, inasmuch as the parties elected to reference only Ordinance 98-01 in the 2003 agreement, it is within the sound discretion of the Board in this instance to grant an exemption from the export prohibition if the Board finds, based on the information presented, that doing so is necessary to preserve the health and safety of individuals living outside the Agency boundaries, and doing so would run afoul of neither Ordinance 98-01 nor 98-02.



801PA-0001
Aromas

AGREEMENT FOR PERMITTING OF NEW WELL

This Agreement ("Agreement") is entered into this ___ day of _____, 2003 and shall become effective as described herein, by and between the Pajaro Valley Water Management Agency ("PVWMA"), a California water agency, and the Aromas Water District ("AWD"), a county water district, referred to herein collectively as "the Parties," or each individually as a "Party."

RECITALS

This Agreement is made with respect to the following facts:

- A. WHEREAS, PVWMA was formed for the purpose of economically and efficiently managing existing and supplemental water supplies in order to prevent further increase in, and to accomplish continuing reduction of, long-term overdraft of the groundwater basin, and to provide and insure sufficient water supplies for present and anticipated needs within the boundaries of PVWMA; and
- B. WHEREAS, the groundwater basin underlying PVWMA is severely overdrafted as a result of the pumping of groundwater at a level which is greater than the amount of annual recharge to the basin, which has thereby resulted in increasing seawater intrusion; and
- C. WHEREAS, PVWMA's Act provides that PVWMA shall have prevailing authority over any special district within the boundaries of PVWMA which exercises any of the powers enumerated in the Act; and
- D. WHEREAS, AWD is a special district within the boundaries of PVWMA which exercises certain powers over water supply; and
- E. WHEREAS, AWD is currently experiencing a well capacity shortfall as a result of the incapacitation of one of AWD's wells within the PVWMA boundary (the "existing well") and further, AWD is currently subject to an existing order from the California Department of Health Services to increase capacity of its production facilities to meet current demand; and
- F. WHEREAS, AWD has an immediate need to construct a new well to meet the needs of its existing water users, and to provide for anticipated future needs, based on existing planning documents.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. Recitals. The Recitals contained herein are an integral part of this Agreement.
2. Effective Date. The Effective Date of this Agreement is the date written in the first paragraph of this Agreement.
3. Construction of New Well. AWD shall construct a new well at its sole cost and in a time frame determined by its sole discretion. When constructed, the new well will be the sole property of, and under the sole operating control of, AWD.
 - a. Location of New Well. The new well shall be located on County of Monterey Assessor's Parcel Number (APN) 141-041-002.
4. Permitting. PVWMA shall cooperate with AWD, to the extent necessary, through the process of obtaining the necessary permits for the new well from the County of Monterey.
5. Augmentation Charges. AWD shall pay to PVWMA all augmentation charges pursuant to PVWMA Ordinance 93-1, as amended from time to time, as if the new well was within the PVWMA boundary.
6. Exportation of Water. PVWMA Ordinance 98-1, adopted on February 18, 1998, prohibits the exportation of water outside the Agency boundary. The parties agree that the new well shall be subject to the export prohibitions of Ordinance 98-1 for all water extracted from the new well and exported outside the PVWMA boundary. Ordinance 98-1 shall not apply to water extracted from the new well and used within the PVWMA boundary.
7. Compliance with PVWMA Ordinances and Resolutions. AWD shall comply with all current and future PVWMA Ordinances and Resolutions that may apply to the new well, as if the new well was located within the PVWMA boundaries.
8. Water Quantity & Quality. PVWMA shall make no warranties or guarantees as to the quality of water extracted from the new well.
9. Compliance with CEQA. On February 6, 2002, by Resolution Nos. 2002-04 and 2002-05, the PVWMA Board of Directors adopted the Revised BMP, including the Recommended Alternative, and certified that the Final EIR for the Revised BMP was complete and was prepared in compliance with the CEQA. As so described and approved, the Revised BMP included the proposed construction of water supply projects and implementation of management strategies to reduce seawater intrusion and increase the safe yield of the groundwater basin. This Agreement is proposed as part of the Revised BMP Recommended Alternative and is within the scope of the project described in the EIR. It will cause no new environmental effects beyond those considered in the EIR and no new mitigation measures need be considered for this Agreement; and it does not require further environmental review.

12/20/02

10. Indemnification. AWD agrees to indemnify and save harmless PVWMA, its officers, agents or employees, successors and assigns from and against any and all claims, demands, losses, costs, or liability of any kind or nature which PVWMA, its officers, agents and employees may sustain or incur for injury to or death of persons, or damage to property as a result of, arising out of AWD's construction and operation of the new well, excepting only liability caused by the sole negligence or willful misconduct of PVWMA, its officers, agents, employees, successors or assigns.

11. No Third Party Beneficiaries. This Agreement does not create, and shall not be construed to create, any rights enforceable by any person, partnership, corporation, joint venture, limited liability company or other form of organization or association of any kind that is not a Party to this Agreement.

12. Notices. Notices under this Agreement shall be deemed to have been given (a) on the date when the notice is personally delivered to the representative(s) of the party to whom the notice is directed, which representative(s) has been designated under this Agreement to receive notices hereunder, or (b) on the third day after the notice is deposited in the U.S. mail, first class or better postage prepaid, addressed as follows:

PVWMA:

Pajaro Valley Water Management Agency
Attn: Charles McNiesh, General Manager
36 Brennan Street
Watsonville, CA 95076

Phone: (831) 722-9292

Fax: (831) 722-3139

AWD:

Aromas Water District
Attn: Mario Iglesias

Phone: (831)

Fax: (831)

13. Incorporation of Prior Agreements. Amendments. This Instrument along with any Exhibits and attachments hereto constitutes the entire agreement between PVWMA, AWD and MCWRA relative to construction of the new well. This Agreement and the Exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both PVWMA and AWD. PVWMA and AWD hereby agree that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to construction of the new well are merged in or revoked by this Agreement.

14. Assignment. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties.

15. Attorneys' Fees. Should any Party to this Agreement take any action to enforce, interpret or apply any provision of this Agreement, including without limitation the institution of any action or proceeding to enforce any provision of this Agreement, or to recover damages, or to obtain injunctive or other equitable or legal relief by reason of any alleged breach of any provision of this Agreement, or for a declaration of any Party's rights or obligations under this Agreement, or for any other judicial or equitable remedy (including arbitration), if the prevailing Party shall be entitled, in addition to such other relief as may be granted, to be reimbursed by the non-prevailing Party for all costs and expenses incurred, including without limitation all attorneys' fees and costs for services rendered to the prevailing Party and any attorneys' fees and costs incurred in enforcing any judgment or order entered, and any attorneys' fees and costs on appeal.

16. Cumulative Rights; Waiver. The rights created under this Agreement, or by law or equity, shall be cumulative and may be exercised at any time and from time to time. No failure by either Party to exercise, and no delay in exercising any rights, shall be construed or deemed to be a waiver thereof, nor shall any single or partial exercise by either Party preclude any other or future exercise thereof or the exercise of any other right. Any waiver of any provision or of any breach of any provision of this Agreement must be in writing, and any waiver by either Party of any breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of that provision or of any breach of any other provision of this Agreement. The failure of either Party to insist upon strict adherence to any term of the agreement on one or more occasions shall not be considered or construed or deemed a waiver of any provision or any breach of any provision of this Agreement or deprive that Party of the right thereafter to insist upon strict adherence to that term or provision or any other term or provision of this Agreement. No delay or omission on the part of either Party in exercising any right under this Agreement shall operate as a waiver of any such right or any other right under this Agreement.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

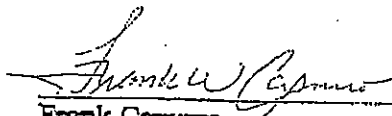
18. Severability. If any provision of this Agreement is invalid, illegal or unenforceable, such provision shall be deemed to be severed or deleted from this Agreement and the balance of this Agreement shall remain in full force and effect notwithstanding such invalidity, illegality or unenforceability.

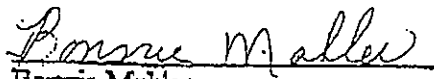
19. Time of Essence. Time is of the essence of this Agreement and of each and all of its provisions.

IN WITNESS WHEREOF, the Parties have executed this Agreement of the day and year first hereinabove set forth.

PAJARO VALLEY WATER
MANAGEMENT AGENCY:

AROMAS WATER DISTRICT

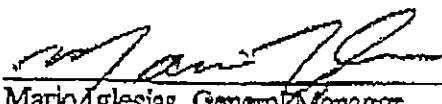

Frank Capurro
Chair, Board of Directors


Bonnie Mahler
President, Board of Directors

Attest:

Attest:

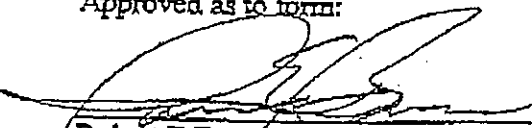

Charles McNiesh, General Manager


Mario Iglesias, General Manager

Approved as to form:

Approved as to form:


Nicole A. Tutt, General Counsel


Robert E. Bosso, General Counsel