

**SEASIDE GROUNDWATER BASIN WATERMASTER
NOTICE
BUDGET AND FINANCE COMMITTEE MEETING
WEDNESDAY
JULY 16, 2014-- 11:00A.M.
CITY OF SEASIDE—CITY HALL CONFERENCE ROOM**

AGENDA

Committee Members

City of Seaside
Daphne Hodgson - Chair
California American Water
Eric Sabolsice
City of Sand City
Kelly Morgan
Coastal Subarea Landowners
Paul Bruno

The next Watermaster Budget and Finance Committee meeting will be held on Wednesday, July 16, 2014 at 11:00AM at the City of Seaside’s City Hall Conference Room

The public may comment on any item within the committee’s jurisdiction. Please limit comments to three minutes in length.

Action Items:

- 1.** Discussion/Consider Recommending to the Watermaster Board of Directors; approving Chief Executive Officer Decision to allow an additional expenditure of up to \$5,000 for HydroMetrics to redo the statistical analysis of Task 1 of their RFS No. 2014-03 using corrected data supplied by MPWMD. This analysis was authorized to perform work to determine whether or not the existing Groundwater Model is accurate as-is, or whether it will need to be recalibrated. The additional \$5,000 will be transfer from the contingency account in the Monitoring and Management Fund to the appropriate account in the Monitoring and Management Fund budget.
- 2.** Discussion/Consider Recommending to the Watermaster Board of Directors to approve the transfer of \$1,560 from the contingency account in the Monitoring and Management Fund to RFS 2013-04 to cover the deficit in that account because of extra work resulting from slightly changing the modeling of the Laguna Seca subarea which brought up the question of where the proper boundary lines of the Laguna Seca subarea should be.
- 3.** Discussion/Consider Recommending to the Watermaster Board of Directors of retaining the legal services of Mr. Russ McGlothlin of Brownstein Hyatt Farber Schreck, LLP (“Brownstein”) to advise Seaside Groundwater Basin Watermaster regarding extractions outside of the Laguna Seca subarea and cumulative extractions in excess of the subarea’s safe yield.

**SEASIDE GROUNDWATER BASIN
WATERMASTER**

TO: Watermaster Budget and Finance Committee

FROM: Robert S. Jaques, Technical Program Manager
MODIFIED AND APPROVED by Dewey D Evans, CEO

DATE: July 16, 2014

SUBJECT: HydroMetrics Work to Verify the Accuracy of the Seaside Basin Groundwater Model

RECOMMENDATIONS:

Recommend to the Watermaster Board of Directors to Approve the Chief Executive Officer's Decision to Authorize the additional expenditure of up to \$5,000 for HydroMetrics to redo the statistical analysis of Task 1 of their RFS No. 2014-03, using corrected data that will be provided by MPWMD, so that the Task 1 work can be properly completed as originally envisioned.

BACKGROUND:

Under RFS No. 2014-03 HydroMetrics was authorized to perform work to determine whether or not the existing Groundwater Model is accurate as-is, or whether it will need to be recalibrated. There are three steps (Tasks) in this work, but only the first Task (Task 1 - Update Groundwater Model through 2013) has thus far been authorized. Task 1 is to be performed in three subtasks:

Subtask 1.1 Collect and Compile Data

Data that needs to be collected for the model update includes groundwater pumping, groundwater levels, injected water volumes, and precipitation. In addition to the precipitation, estimates of storm water percolation, septic tank leakage, and system losses are also needed as they all contribute to the recharge of the basin.

Groundwater levels and production data will be requested from Monterey Peninsula Water Management District (MPWMD). Other pumpers, such as Cal Water Service and Marina Coast Water District, which do not fall under the Watermaster, will be approached separately. Groundwater production for the golf courses outside the Seaside basin will be estimated based on assumptions made previously.

Subtask 1.2 Input New Data to Groundwater Model

The data compiled in Subtask 1.1 will be incorporated into the groundwater flow model.

Subtask 1.3 Compare Measured and Simulated Groundwater Levels

Once the model has been updated and is successfully running, hydrographs comparing measured and simulated groundwater levels will be prepared. The hydrographs produced will be the same ones used in the 2009 model report.

If there is a good match, further tasks will not be required. HydroMetrics, however, will prepare a formal letter to the Watermaster's Technical Program Manager indicating whether or not

calibration is necessary. If the measured and simulated groundwater levels do not match well for the updated period, the model will require recalibration and Task 2 will need to be authorized by the Watermaster.

DISCUSSION:

HydroMetrics has nearly completed Task 1 and made a presentation on the preliminary findings of that work at the TAC's June 4, 2014 meeting. During the course of that presentation it was discovered that some of the water level data that had been provided to HydroMetrics was anomalous (the data was presented to HydroMetrics as being static water level data when in fact it was water level data measured when the well pump was still running). This resulted in statistical analytical results that were misleading and inaccurate. MPWMD reported that it has information from its personal knowledge of how the data was obtained and compiled that will enable this to be corrected. Under MPWMD's existing contracts with the Watermaster, no additional cost authorization will be needed in order for MPWMD to provide these services. HydroMetrics, however, when it prepared its cost estimate to perform Task 1, did so on the understanding that the data provided to it would be correct and accurate.

In order to redo the preliminary statistical analysis by using the corrected data that MPWMD can provide, HydroMetrics has indicated that it will incur up to \$5,000 in additional costs. There are ample funds remaining in the Management and Monitoring Program's approved Contingency line item to cover this additional cost.

Redoing the statistical analysis will enable the Task 1 work to be properly completed, in order to determine the accuracy of the model, and whether or not recalibration is necessary.

The TAC unanimously recommends that the Board authorize the additional expenditure of up to \$5,000 for HydroMetrics to redo the statistical analysis, so that the Task 1 work can be properly completed as originally envisioned. If this additional funding is approved at today's meeting, it is anticipated that the Task 1 work can be completed in time for presentation to the Watermaster Budget and Finance Committee meeting at its July 16th meeting and hopefully to the Watermaster Board of Director's meeting on August 6th.

SEASIDE GROUNDWATER BASIN
WATERMASTER

TO: Watermaster Budget and Finance Committee

FROM: Dewey D Evans, CEO

DATE: July 16, 2014

SUBJECT: Transfer of Funds from Monitoring and Management (M&M) Contingency Account to cover a deficit in an account in the Monitoring and Management Fund because of extra work due to a change in Modeling of Laguna Seca Subarea

RECOMMENDATION:

Consider transferring \$1,560 from M&M Contingency Account to cover the deficit in RFS 2013-04 caused by some extra work that was necessary while performing groundwater modeling, and preparing certain analysis of the Laguna Seca Subarea

BACKGROUND AND DISCUSSION:

When the RFS No. 2013-04 with HydroMetrics was authorized by the Board on September 4, 2013 the scope of the contract was to perform groundwater modeling and prepare certain analyses of the Laguna Seca Subarea. The RFS was to determine the impacts to the Laguna Seca Subarea from pumping changes, and to estimate the Natural Safe Yield and Operational Safe Yield of the subarea. There were three objectives for this modeling work:

1. Estimate impacts of California American Water discontinues its pumping from the Laguna Seca Subarea
2. Produce an updated estimate of the Natural Safe Yield of the Subarea
3. Develop an estimate of the Operational Safe Yield of the Subarea

The financial total for this work on RFS was to not exceed \$25,060.

At the April 2, 2014 Board meeting the Board authorized Hydrometrics to conduct further modeling to see whether reducing or eliminating pumping by Alternative Producers in the Laguna Seca Subarea would reduce the rate at which groundwater levels are falling and what impact on the groundwater level from pumping outside the Basin boundaries is having on the Laguna Seca Subarea.

There was still some \$6,518.82 remaining in the RFS No. 2013-04 which the Board voted was available for this additional modeling work. As HydroMetrics proceeded with the additional modeling work, it was determined that approximately 1,100 acre feet of water per year was being pumped by others outside of the Seaside Groundwater Basin Watermaster boundaries. Which resulted in a total of \$26,620 being spent and charged against RFS No. 2013-04; making it necessary to request the transfer from the M&M Contingency Account and transfer the same amount into the RFS No. 2013-04 to make it whole.

FISCAL IMPACT:

The transfer will correct the over expenditure

**SEASIDE GROUNDWATER BASIN
WATERMASTER**

TO: Watermaster Budget & Finance Committee

FROM: Dewey D. Evans, CEO and
Written by Laura Dadiw, Assistant to the CEO

DATE: July 16, 2014

SUBJECT: Discussion on whether Watermaster should obtain legal counsel for Laguna Seca Subarea matter

RECOMMENDATIONS:

Consider whether Watermaster should hire legal counsel regarding Laguna Seca Subarea material injury.

BACKGROUND:

At the April 2, 2014 Watermaster regular board meeting, Mr. Derrick Williams of HydroMetrics Water Resources Inc. gave a presentation on the results of recent groundwater modeling of the Laguna Seca Subarea. He stated that the wells beyond the east Basin boundary are a mix of private, golf course, and purveyor wells with no known limitations on pumping at this time; they are not within Water Management District jurisdiction, and are estimated to be pumping a about 1,100 acre feet per year although there has been no formal verification of this amount.

Counsel Freeman stated that the judgment can only take into consideration those wells that were actually parties to the original Decision. He suggested contacting well owners outside of the east Basin boundary to advise them that it would be in the best interest of all well owners within and outside the adjudicated Basin to work together to determine the best pumping practices to avoid detriment to the groundwater supply. He felt that the issue was of such importance that the court should be notified as soon as possible, advising that modeling would be forthcoming and would undergo peer review prior to court submission.

The Board unanimously authorized Hydrometrics to perform further modeling of the Laguna Seca Subarea to determine the impact on groundwater levels due to pumping from outside the eastern and southeastern boundaries of the area, and to advise the court of the modeling being undertaken to determine the extent of material injury.

DISCUSSION:

The attached summary of the Hydrometrics Technical Memorandum “*Results of Laguna Seca Safe Yield Analysis*” by Watermaster Technical Program Manager, Bob Jaques was considered to serve as notice to the court of the Laguna Seca Subarea matter and be submitted to the court by Russ McGlothlin of the legal firm Brownstein, Hyatt, Farber, and Schreck. Mr. McGlothlin has a high degree of knowledge of Seaside Basin Watermaster issues having been significantly involved in development of the adjudication documents as well as representing the City of Seaside with respect to Basin-related matters. The summary document was to be vetted through the Watermaster Technical Advisory Committee and subsequently the Watermaster Board. In the meantime, Mr. McGlothlin notified Watermaster that in order for him to act on its behalf, a

disclosure of Relationship and Waiver of Potential Conflict of Interest signed by representatives of Watermaster, City of Seaside, and the Monterey Peninsula Regional Water Authority would need to be obtained by his firm.

Judge Randall has a policy of communicating solely with legal counsel representatives of Watermaster. There has been no formally contracted legal counsel for Watermaster since its inception. To address the serious nature of the Laguna Seca Subarea material injury to effect relief acceptable to the court, frequent communications between Watermaster and the court are expected. The Budget and Finance Committee is asked to consider court communications anticipated with respect to the Laguna Seca Subarea material injury matter and decide whether to recommend to the Watermaster board to enter into contract with Mr. McGlothlin for legal services. A budget amendment would be needed to provide for legal costs in the Watermaster current year budget.

FISCAL IMPACT:

The fiscal impact of Watermaster retaining legal counsel is not known as the scope of tasks would need to be defined by the Watermaster Board. Court communications initially would be notification of the Laguna Seca Subarea modeling and estimated degree of material injury determined. As outlined in the attached Agreement for Legal Services, Mr. McGlothlin's reduced rate to Watermaster is \$450/hour.

ATTACHMENTS:

Bob Jaques's "Summary of Initial Findings of Groundwater Modeling of the Laguna Seca Subarea of the Seaside Groundwater Basin, April 8, 2014" (summarized from HydroMetrics "*Results of Laguna Seca Safe Yield Analysis*")

Brownstein, Hyatt, Farber, and Schreck Agreement for Legal Services

Brownstein, Hyatt, Farber, and Schreck Disclosure of Relationship, and Waiver of Potential Conflict of Interest

**SUMMARY OF INITIAL FINDINGS OF GROUNDWATER
MODELING
OF THE
LAGUNA SECA SUBAREA
OF THE
SEASIDE GROUNDWATER BASIN**
April 8, 2014

BACKGROUND:

The Seaside Basin Watermaster (Watermaster) recently had its hydrogeologic consultant HydroMetrics perform modeling work of the Laguna Seca subarea (LSS) of the Seaside Groundwater Basin. There were three objectives for this modeling work:

1. Estimate impacts if California American Water (Cal Am) discontinues its pumping from the LSS (Cal Am has that that it plans to discontinue its pumping from the LSS once its Monterey Peninsula Water Supply Project is completed and becomes operational)
2. Produce an updated estimate the Natural Safe Yield of the LSS
3. Develop an estimate of the Operational Safe Yield of the LSS

This work was undertaken in response to questions and concerns raised about the steady decline in water levels in the LSS, the outlook for long-term water supply in the LSS, and whether or not Cal Am's Operating Yield for the LSS would drop to zero by 2021 when all of the 10% pumping cutbacks mandated by the Adjudication Decision will be completed.

MODEL FINDINGS

HydroMetrics prepared a Technical Memorandum titled "*Results of Laguna Seca Safe Yield Analysis.*" This report provides some very significant insights into the LSS and to the Seaside Basin.

The principle conclusions of the Memorandum are:

1. Even if Cal-Am discontinues all pumping from its LSS wells, groundwater elevations in the subarea will continue to decline. The eastern side of the subarea will suffer the greatest and most persistent declines. With all Cal Am pumping in this subarea eliminated, groundwater elevations will fall below the top of the well screens under pumping conditions in several production wells prior to 2041.

2. The model estimates that the average annual natural safe yield from the Laguna Seca subarea is only 240 acre feet per year. This is considerably lower than the perennial safe yield of 608 acre feet per year set forth in the adjudication Decision. This finding is particularly significant because 240 acre feet per year is much less than the 644 acre feet per year of annual production the Decision allocates to the Alternate Producers alone in the LSS.

3. Even if pumping in the LSS is reduced to the natural safe yield of 240 acre feet per year, groundwater levels will not be high enough to keep levels at all wells above their well screens. This is because there are seasonal and year-to-year variations in the amount of

rainfall recharge of the subarea, and the amount of pumping needed to meet seasonal demands, resulting in fluctuating groundwater levels.

4. Eliminating all pumping from the LSS (including pumping by all Alternate Producers) does not completely halt the predicted decline in groundwater elevations in the easternmost monitoring wells.

5. Pumping from wells east of the LSS influences groundwater elevations in the eastern portion of the subarea. These wells (outside of the LSS and outside of the Seaside Basin boundary contained in the adjudication Decision) are contributing to the subarea's inability to achieve stable groundwater elevations.

DISCUSSION

By way of explanation of some of these conclusions, the natural safe yield is a mass balance number that simply looks at inflows and outflows to a basin. It assumes that it is possible to extract the positive difference between inflows and outflows, and this difference constitutes the natural safe yield. However, depending on well locations, pumping this amount may still result in lowering groundwater levels. For example, if all the wells in a basin were concentrated in a single city block, one might have a natural safe yield of so many acre-feet per year based on a water balance approach, but you could not extract that much water from this tight cluster of wells without the wells going dry. This is why the concept of an "operational safe yield" was suggested by HydroMetrics. The operational safe yield accounts for the actual locations of existing (or planned) wells. The operational safe yield looks at how much water can be practically extracted without causing undesirable lowering of groundwater levels in wells. The operational safe yield is always equal to or less than the natural safe yield.

The Adjudication Decision defines the term "Material Injury" to mean "...a *substantial adverse physical impact to the Seaside Basin or any particular Producer(s), including but not limited to: seawater intrusion, land subsidence, excessive pump lifts, and water quality degradation.*" In the context of the LSS it appears that seawater intrusion, land subsidence, and water quality degradation are not currently of concern, so excessive pump lifts (and other consequences) resulting from falling groundwater levels should be the focus of determining whether material injury is occurring or is likely to occur. Excessive pump lifts could cause well owners to incur increased pumping costs, and/or costs to install new pumping equipment. One other consequence of falling groundwater levels would be exposing portions of well screens that were previously continuously submerged. This can reportedly result in more rapid corrosion of the well screen material which would eventually cause well owners to incur repair costs that they would not otherwise incur.

PLANNED FURTHER WORK

At its April 2, 2014 meeting the Watermaster Board authorized HydroMetrics to conduct further modeling to better determine:

1. Whether reducing or eliminating pumping by Alternative Producers in the LSS would appreciably reduce the rate at which groundwater levels are falling in the LSS.
2. The impact on groundwater levels in the LSSA of pumping from outside the eastern and southeastern boundaries of the LSS.

3. Have Monterey Peninsula Water Management District do further research on wells for which well drawdown and casing elevation data was not previously available for use in HydroMetrics' modeling of the LSS, and if such data can be obtained provide it to HydroMetrics for inclusion in the final modeling report.

This work is expected to take approximately six weeks to complete.

FUTURE ISSUES TO BE CONSIDERED

Once the additional modeling described above has been completed, the results will be presented to the Watermaster's Technical Advisory Committee and to its Board. Some of the issues the Board may consider at that time include:

1. What additional information would the Board need in order to make a determination regarding whether or not Alternative Producers in the LSS should be directed to reduce their pumping?
2. The findings from this modeling work indicate that the Seaside Basin's true hydrogeologic boundary of the LSS area is further to the east and southeast than the boundary shown in the Decision. What additional information would the Board need in order to make a determination as to whether or not to request that the Court provide direction regarding reestablishing the boundaries of the Seaside Groundwater Basin in the LSS to address the discrepancy.

June 23, 2014

VIA EMAIL

Dewey Evans
Chief Executive Officer
Seaside Groundwater Basin Watermaster
2600 Garden Road Suite 228
Monterey, CA 93940
watermasterseaside@sbcglobal.net

RE: Agreement for Legal Services

Dear Mr. Evans:

Thank you for retaining Brownstein Hyatt Farber Schreck, LLP (“Brownstein”), to advise Seaside Groundwater Basin Watermaster (“Watermaster”) regarding extractions outside of the Laguna Seca subarea and cumulative extractions in excess of the subarea’s safe yield (“Laguna Seca Matter”). In our representation of Watermaster regarding the Laguna Seca Matter, we are representing Watermaster and not its member agencies.

This letter and the enclosed Terms and Conditions constitute the Legal Services Agreement between Brownstein and Watermaster. This Agreement will also apply to other services that we may provide you from time to time, at your request, unless we execute a separate agreement. When we refer to “you” in this Agreement, we are referring to you in your representative capacity for Watermaster.

We cannot predict with certainty the amount of fees and costs that may be incurred. Our hourly rates are based upon the experience, reputation and ability of the professional performing the required service, and we will assign to your matter the personnel who, in our judgment, are best suited to represent you. My current hourly rate is \$525, however my hourly rate will be discounted to \$450 for Watermaster. I will be assisted by Jena Shoaf whose current hourly rate is \$290. Unless you request otherwise, we will bill you for services rendered and disbursements and charges on a monthly basis. Subject to the Terms and Conditions, you agree to pay those statements upon receipt, and no later than the last day of the month in which you receive the statement. We are not requesting a retainer.

If you agree with the provisions of this letter and with the Standard Terms and Conditions, please sign the enclosed copy where indicated, and return it to us with the Disclosure of Relationship, and Waiver of Potential Conflict of Interest. If you do not understand any portion of this letter, or the attached Standard Terms and Conditions, or if you have any questions, please call us at your earliest convenience. If you require advice about your decision to engage us, you should confer with independent counsel before signing this agreement. We cannot give you advice about that decision.

We look forward to a long and productive relationship with you, and thank you for the opportunity to represent you.

Sincerely,

Russell M. McGlothlin

RMM:amm

Enclosures: Standard Terms and Conditions
Disclosure of Relationship, and Waiver of Potential Conflict of Interest

ACCEPTED AND AGREED TO:

SEASIDE GROUNDWATER BASIN WATERMASTER

By: _____

Dated: _____

Name: _____

Its: _____

ACCEPTED AND AGREED TO:

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: _____

Robert J. Saperstein
Managing Shareholder, California

Dated: _____

June 23, 2014

VIA EMAIL

Daphne Hodgson
Deputy City Manager of Administrative Services
City of Seaside
440 Harcourt Avenue
Seaside, CA 93955
dhodgson@ci.seaside.ca.us

James Cullem
Executive Director
Monterey Peninsula Regional Water Authority
580 Pacific Street, Monterey
Monterey, CA 93940
Cullem@monterey.org

Dewey Evans
Chief Executive Officer
Seaside Groundwater Basin Watermaster
2600 Garden Road Suite 228
Monterey, CA 93940
watermasterseaside@sbcglobal.net

RE: Disclosure of Relationship, and Waiver of Potential Conflict of Interest

Dear Ms. Hodgson, Mr. Cullem, and Mr. Evans:

The purpose of this letter is to disclose to the City of Seaside ("Seaside"), Monterey Peninsula Regional Water Authority ("MPRWA") and Seaside Groundwater Basin Watermaster ("Watermaster") potential conflicts of interest relating to our simultaneous representation of Seaside, MPRWA and Watermaster (collectively "Monterey Clients" or "you") which might involve similar issues over which we represent the Monterey Clients, and to obtain the Monterey Clients' written acknowledgment of that disclosure and waiver of any current conflicts of interest, if any. This letter confirms and supplements prior discussions and documentation regarding this matter between you and representatives of Brownstein. Watermaster has requested our assistance regarding the matter of extractions outside of the Laguna Seca subarea and cumulative extractions in excess of the subarea's safe yield ("Laguna Seca Matter"). In our representation of Watermaster regarding the Laguna Seca Matter, we are representing Watermaster and not its member agencies. We will take direction from Mr. Evans and other employees of Watermaster regarding the Laguna Seca Matter.

The applicable California Rules of Professional Conduct (attached) require us to explain the extent of our client relationships, fully disclose any existing or potential conflicts of interest, and obtain your written

consent to our ongoing concurrent representations of the Monterey Clients. It is important that you understand the nature of these potential conflicts before signing the attached Consent and Waiver of Conflict of Interest, pursuant to the Rules of Professional Conduct (attached).

As previously discussed, the Monterey Clients understand that Brownstein represents numerous private and public agency clients throughout California and the western states, as well as on a federal and international basis. We currently represent a number of cities and special districts as general and special counsel, and are engaged in numerous matters throughout California relating to water law and policy. Brownstein provides a variety of professional services for its clients, including general counsel services, transactions, litigation, legislative advocacy, regulatory compliance, political and strategic advice, coalition building and other services.

We recognize that actual conflicts may arise in the future. Should we become aware that our representation of any current or future client may create an actual conflict of interest with our representation of the Monterey Clients, either among you or individually with other clients, it is our intent to promptly advise you so that you may decide whether you wish to obtain independent counsel concerning that matter or consent to Brownstein's continued representation of you.

As of the date of this letter, we are aware of no actual legal conflicts involving the Monterey Clients. However, the attorney-client relationships discussed below may create the potential for a conflict of interest. Each of these circumstances has previously been disclosed to the Monterey Clients.

(1) Brownstein represents MPRWA with respect to issues relating to Cal-Am's proposed Monterey Peninsula Water Supply Project ("MPWSP") for which Cal-Am is presently seeking approvals from the CPUC and other agencies, and efforts to obtain an extension of the Cease and Desist Order in SWRCB WR Order 2009-0060 ("CDO") to allow sufficient time for the completion of the MPWSP. This will likely include future proceedings before the SWRCB. We also generally represent the MPWSP concerning water supply by Cal-Am to the Monterey Peninsula, which may involve future proceedings before the SWRCB, CPUC, other regulatory agencies, or the California Courts.

(2) Brownstein represents Seaside with respect to matters concerning the Seaside Groundwater Basin ("Seaside Basin") and Seaside's use of groundwater from the Seaside Basin. Seaside does not extract groundwater from the Laguna Seca subarea, which is the precise subject of the proposed representation of Watermaster. However, Seaside shares Watermaster's concern and goals for robust management of the Seaside Basin and long-term protection of all areas of the Seaside Basin pursuant to the Seaside Basin Groundwater Judgment. As such, the interests of Seaside and Watermaster are aligned at present with respect to the proposed representation of Watermaster with respect to the Laguna Seca Matter.

(3) Brownstein previously represented Cal-Am with respect to issues pertaining to the Carmel River, but no longer does so.

(4) Brownstein also represented the cities of Sand City, Del Rey Oaks, Pacific Grove, Seaside, Monterey and Carmel before the California Public Utilities Commission ("CPUC"), and other judicial and administrative venues, with respect to the prior proposed water supply project referred to as the Regional Water Project that was proposed to provide replacement water to Cal-Am, and Cal-Am's request to approve a moratorium within its Monterey District. Brownstein's present representation of the interests of the aforementioned cities concerning replacement water supplies for the Monterey Peninsula is undertaken pursuant to our representation of the MPRWA.

(5) Brownstein previously represented the City of Monterey with respect to other water matters within the city but no longer does so.

By signing this letter and returning it to us, Seaside, MPRWA and Watermaster acknowledge that we have fully disclosed the foregoing matters to you. Although we do not presently perceive a likely conflict of interest and cannot predict with specificity the manner in which a conflict could arise, the interrelated nature of the Carmel River, the Seaside Basin, and the proposed MPWSP, which are used (or proposed to be used) by Cal-Am in an integrated manner to serve water demands on the Monterey Peninsula, could cause a conflict of interest to arise.

At the same time, it is foreseeable that a conflict of interest may arise in the future. For example, if Seaside were to differ with Watermaster with respect to the strategy and proper approach for resolving the Laguna Seca Matter, Brownstein could not represent any party to that matter without proper informed written consent. Likewise, a conflict could arise if the Laguna Seca Matter presented an issue related to the completion or operation of the MPWSP or efforts to manage issues stemming from the CDO, in which case, Brownstein could not represent any party to that matter without proper informed written consent.

Should an actual conflict occur between the MPRWA, Seaside or Watermaster regarding any matter in which Brownstein represents the Monterey Clients, we will attempt to resolve the conflict in a manner that protects our ability to continue our concurrent representation of you. However, that may not be possible or practical given the ethical rules presented below. Thus, we request that Seaside, the MPRWA and Watermaster waive any potential conflict of interest with respect to our representations as disclosed above. Should a conflict or dispute arise that we cannot resolve informally among the Monterey Clients, we will not represent any of the Monterey Clients with respect to the disputed matter.

We very much value our relationship with Seaside and MPRWA and the opportunity to represent Watermaster, and recognize that you are free to terminate your engagement of Brownstein at any time.

Should you have any questions regarding this letter, please contact me. We respectfully request that you sign and return the enclosed copy of this letter acknowledging that you have been advised of the California Rules of Professional Conduct and of the potential conflicts associated with your respective interests, and that you nevertheless agree to the concurrent representation and the waiver of conflicts regarding the Monterey Clients.

We encourage you to seek the advice of independent counsel in reviewing this consent. Should you have any questions concerning this letter or the consent, please discuss them with your own, independent counsel before signing and returning the enclosed copy of this letter.

Best Regards,



Russell M. McGlothlin
Brownstein Hyatt Farber Schreck, LLP

Enclosures: California Rules of Professional Conduct

CONSENT AND WAIVER

The undersigned acknowledge receipt of the above written disclosure pursuant to the California Rules of Professional Conduct and understand the matters discussed therein. Having all this information in mind, I consent and give approval to Brownstein's concurrent representation of Seaside, MPRWA and Watermaster as described in this letter, and waive any actual or potential conflict of interest arising from such representation. In the event that an actual conflict of interest occurs, we will not represent any of the Monterey Clients with respect to the disputed matter.

I acknowledge that I have had an opportunity to review this matter with independent legal counsel. In the event that I have not discussed the matter with a legal counselor of my choice before executing this consent/waiver, I freely and voluntarily waive such counsel, although I understand that I have the right to seek such independent counsel regarding this matter at any time.

CITY OF SEASIDE

By: _____ Dated: _____
Daphne Hodgson
Deputy City Manager, City of Seaside

MONTEREY PENINSULA REGIONAL WATER AUTHORITY

By: _____ Dated: _____
James Cullem
Executive Director

SEASIDE GROUNDWATER BASIN WATERMASTER

By: _____ Dated: _____

Name: _____

Its: _____

California Rules of Professional Conduct, Rule 3-310 (B) and (C)

- "(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:
- (1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or
 - (2) The member knows or reasonably should know that:
 - (a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and
 - (b) the previous relationship would substantially affect the member's representation; or
 - (3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or
 - (4) The member has or had a legal, business, financial, or professional interest in the subject matter of the representation.
- (C) A member shall not, without the informed written consent of each client:
- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
 - (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
 - (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter."

Scope of Representation: The scope of our representation is set forth in the attached Letter. Our representation of you on any particular matter will end when we have completed our essential work on that matter.

Duties of the Parties: We agree to provide all legal services reasonably required to represent you, consistent with our ethical obligations. It is our intent to provide you with thorough, prompt and cost-efficient legal services, keep you informed of significant developments in the matter, and respond to your inquiries. You agree to fully cooperate with us, be open and truthful and provide us with all information pertaining to the matter, keep us informed of developments, to pay our bills in a timely manner, and keep us advised of your address, telephone number and whereabouts. You also agree to appear at any proceeding we deem necessary and to cooperate fully with us on all matters related to the investigation, preparation and presentation of your matter.

Fees: We review all billing statements before they are issued to ensure that the amount charged is appropriate. The statement for fees is simply the product of the hours worked multiplied by the hourly rates for the attorneys and legal assistants who did the work. The current range of hourly rates for our professional services is:

Partners:	From \$350 to \$1065 per hour
Of Counsels:	From \$300 to \$1065 per hour
Associates:	From \$210 to \$400 per hour
Land Use Planners:	From \$150 to \$265 per hour
Paralegals:	From \$150 to \$265 per hour
Legal Assistants:	From \$100 to \$150 per hour

We adjust our rate structure at the beginning of each calendar year. You agree to pay all fees billed at the then-current rate.

Outside Contract Attorneys and Legal Assistants: You agree that we may utilize specialized contract attorneys and legal assistants as necessary. You agree to pay the reasonable hourly rate for these legal services.

In-House Costs and External Expenses: In addition to charging fees for legal work, we will charge for certain out-of-pocket costs incurred by our firm in representing clients. Charges for long distance telephone calls, facsimile charges, in-office copying, ordinary postage and deliveries made by in-house staff are covered by a 2.5% administrative fee, calculated at 2.5% of fees incurred. This administrative fee is in lieu of itemizing those costs. Other fees, such as computer-assisted legal research and third party vendor fees including document copying, transcript production, overnight delivery service charges, travel, meals and hotel accommodations will be itemized and billed separately at cost.

Other in-house costs and expenses include, but are not limited to, secretarial overtime, extraordinary administrative, technical or accounting support; computer legal research; messenger and other delivery fees; mileage, and the cost of licensing and other installation of special computer programming to manage your case. These are directly billed to you at our cost.

External expenses are also charged at cost. These include, but are not limited to, the following: Notary fees; consultant costs, investigative costs, professional mediator, arbitrator

and/or special master fees; travel costs, including parking, transportation, meals and hotels. External expenses will either be passed through to you for direct payment to the vendor or included on your statement. We may select experts, consultants and investigators who in our judgment are necessary to aid in the preparation of your matter and will inform you of the persons selected and their charges. You authorize us to incur all reasonable costs and to hire such experts, consultants and investigators. We will not incur any major external expenses on your behalf without your prior approval.

Billing Period and Payments: We will bill you for services rendered and disbursements and charges on a monthly, or such other periodic, basis as we may determine. If you require additional statements, you agree to request them at intervals of no less than 30 days and we agree to respond within 10 days.

You agree to inform us of any dispute you may have with respect to a statement within 10 days of the statement date. If you do not object, the statement will be deemed correct. If you do object, we will consider our right to the fees and costs set forth on that statement as "disputed." Absent a dispute, you agree to pay all statements upon receipt, and no later than the last day of the month in which you receive the statement. Even if you dispute a portion of a statement, you agree to pay the undisputed portion not later than the last day of the month in which you receive the statement. If payment is not timely received, we may assess a monthly delinquency charge of 1.25% (15% per year) of the amount not paid until paid in full. Payments will be applied to the longest outstanding charges in the following order: first, costs, then delinquency charges, and then fees.

Retainers: If required, you agree to pay an advance fee retainer upon execution of this agreement and agree that we may, at our discretion, withdraw the undisputed amount of any statement, whether fees or costs, from any retainer you have on deposit. You agree to replenish the retainer monthly to maintain a credit toward fees. That means that, even though you have a retainer on account, you still must pay your statements as they become due. If we expect significant additional expenses, you agree to provide a further retainer within 15 days of our request.

Your retainer will be held on your behalf in our trust account without interest to you, because California law requires all interest earned on such funds to be forwarded to the California State Bar for its Legal Service Trust Fund Program. If you prefer, you may request that we hold your funds in a non-interest bearing account, or in an interest bearing account for your benefit. If you make such a request, you agree to pay administrative costs of a one-time \$75 set-up charge and a \$25 per month service charge. At the conclusion of our representation, we will return any unearned retainer to you.

As an additional retainer and as security for the payment of our fees, costs and expenses, you agree that we have a first priority lien on all claims and causes of action that are the subject of our representation under this Agreement and on all proceeds or property obtained or recovered, whether by agreement, settlement, mediation, arbitration award, court judgment, cost or fee award or otherwise resulting from our representation.

No Guarantee: Our comments about the potential outcome of your matter or any phase thereof are expressions of opinion only. We cannot guarantee the outcome or make any promises in that regard.

Discharge: Our goal is to maintain at all times a constructive and positive relationship with you, to the conclusion of this matter and in future matters. However, you have the right to discharge us as your lawyers at any time, and we have the right to withdraw from your representation at any time, consistent with our ethical obligations. If you discharge us or we elect to withdraw, you agree to immediately secure new counsel. If we are your attorneys of record in any proceeding, you agree to cooperate fully in substituting such new counsel as your attorneys of record. At the time of discharge or withdrawal, you agree to immediately pay us for all services rendered to you and for all costs and expense paid or incurred by us on your behalf.

Files: At the conclusion of our services, your files will be transferred to you upon request. You agree to pay the cost of accessing, copying and delivering the file to you. If you do not request the return of your files within five (5) years from either the completion of our essential work on the matter or the termination of our relationship by discharge or withdrawal, we have the right, but not the obligation, to destroy any files created and maintained by us with respect to the matter.

Disputes: Any controversy or claim arising out of or relating to fees and/or costs incurred under this Agreement shall be resolved pursuant to Business and Professions Code section 6200 *et seq.* All other disputes arising out of or relating to this Agreement or the professional services rendered under this Agreement, shall be determined in accordance with the laws of the State of California. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. Each side shall bear its own costs and attorney fees in said arbitration.

Miscellaneous: Unless you instruct us to the contrary in writing, we will utilize facsimile, e-mail, cellular phone, PDA and similar communication methods, and we disclaim any liability for unauthorized third-party interception of communications. You agree that we may use your name and information generally available to the public in our marketing efforts.

Interpretation and Effective Date: This agreement is our entire and only agreement and is governed by California law. If any provision is found unenforceable, the remainder of the agreement will remain in effect. This agreement will not take effect until you sign and return the enclosed copy of the letter with these terms and conditions attached and until the agreement has been countersigned by the firm's Managing Partner. This agreement will then be retroactive to the date services were first provided. If this agreement does not take effect, you will still be required to pay us the reasonable value of any services we have performed for you.