



**APPENDIX M**  
CAW letter dated July 6, 2011 to MCWD

**FILED**  
03-01-12  
04:59 PM



Robert G. MacLean  
1033 B Avenue  
Suite 200  
Coronado, CA 92118  
robert.maclean@amwater.com

P 619.435.7401  
F 619.435.7434

July 6, 2011

Jim Heitzman, General Manager  
Marina Coast Water District  
11 Reservation Road  
Marina, CA 93933

Re: MCWD Draw Request under CAW Credit Line Agreement

Dear Jim:

As you know, over the past couple weeks we've exchanged several letters relating to MCWD's \$3,500,000 draw request under the CAW Credit Line Agreement. Currently, MCWD has agreed to defer such draw request through and including the date of our next meeting scheduled for July 7, 2011. As such date approaches, I'd like to raise several issues for your consideration prior to you submitting a new draw request under the CAW Credit Line Agreement.

First, the Water Purchase Agreement requires MCWD and MCWRA to obtain, subject to market conditions, all or a portion of the financing for the Project costs within 120 days following the Effective Date. The Effective Date occurred on January 11, 2011 and, therefore, the date on which the public agencies were to have obtained at least partial financing for the Project was May 11, 2011. I recognize that the public agencies have been developing a plan for the financing, and CAW has provided comments to such plan, but the contractual requirement is that financing be obtained by the public agencies. It is imperative that a plan be developed and implemented, and the public agencies obtain financing for the project, as quickly as possible. During our May 16, 2011 Advisory Committee meeting, there was discussion regarding whether the first draws under the CAW Credit Line Agreement constituted the first portion of financing. Upon investigating this matter further, I've learned the Water Purchase Agreement does not allow the Advisory Committee to make such a determination and, as such, it is CAW's opinion that there has yet to be any financing of the Project costs. CAW stands ready to provide continued assistance to MCWD and MCWRA in the development of the financing plan.

Jim Heitzman, General Manager  
Marina Coast Water District  
July 6, 2011  
Page 2 of 3

Second, the public agencies' June 15<sup>th</sup> draft of the Conceptual Level Financing Plan contemplates use of the \$17,500,000 CAW Loan as bridge financing until the long-term financing for the Project can be obtained "sometime in the second half of 2012." As noted above, the public agencies were to obtain such long-term financing by May 11, 2011, not more than a year from now. It was never the parties' intent that the CAW Loan be used as interim financing, the Water Purchase Agreement does not require CAW to fund the CAW Loan in the complete absence of any long-term financing obtained by the public agencies, and CAW does not feel it is appropriate to allow the CAW Loan to be used in such circumstances. The Financing Plan must be viable on its own, without use of the \$17,500,000 CAW Loan (or any portion thereof), to obtain the long-term financing. With a viable Financing Plan in place, CAW will ensure the CAW Loan will be available, as contemplated by the Water Purchase Agreement, to fund any shortfall in the long-term financing.

Third, the attachment to your June 17<sup>th</sup> letter indicates your intent to use draw funds to pay costs of defending the CEQA lawsuit filed against MCWD by the Ag Land Trust and refers to Section 14.2 of the Water Purchase Agreement. At this time, the CAW Credit Line Agreement cannot be used for such purpose. Section 14.2 of the Water Purchase Agreement permits the use of the credit line for such purpose only if "the Indebtedness (not including any CAW Financing)" does not permit use of the proceeds of such indebtedness for such purpose. This requirement cannot be satisfied until non-CAW Indebtedness (as defined in the Water Purchase Agreement) is obtained. CAW also needs affirmation from MCWD that the first draw request was not used to fund defense of the CEQA lawsuit.

Fourth, as noted in my June 27<sup>th</sup> letter, I would like to receive the information update regarding MCWD's Pre-Effective Date Costs and Expenses as required under the Water Purchase Agreement definition of Pre-Effective Date Costs and Expenses. In the absence of a Draw Request Approval from MCWRA, this information is necessary to ensure compliance with section 5 of the CAW Credit Line Agreement.

Fifth, the June 17<sup>th</sup> draw request is not entirely complete and additional information is required in order for CAW to process it. The attachment to your letter generally states the purpose of the draw request is to cover expenses related to the development, financing and construction of the Project and lists ten general categories of activities. The CAW Credit Line Agreement requires that specific information be provided with respect to the draw request and limits the use of such funds to the management of financial liquidity directly related to the implementation of the Project. Given those requirements, CAW requires the following information related to the draw request: (i) the past specific uses/applied amounts of the first draw request and the unapplied amount of the first draw, and (ii) for such unapplied amount, and for the second draw request, a

Jim Heitzman, General Manager  
Marina Coast Water District  
July 6, 2011  
Page 3 of 3

specific description of the anticipated uses, the projected amounts needed, and when those funds will be expended.

Finally, given MCWD's projected spending rate, as reported by Mr. Don Evans at our June 30, 2011 meeting, CAW believes MCWD's \$3,500,000 draw request to be in an amount more than that which is necessary to cover costs to be incurred to move the Project forward in the short-term. Accordingly, CAW respectfully requests that if MCWD decides to issue a new draw request under the CAW Credit Line Agreement, such draw request be limited to an amount of \$1,000,000, or less if appropriate, to fund short-term expenses to be incurred by MCWD. MCWD will retain the right to request additional draws as the immediate need for funds arises.

If you have any questions or would like to discuss any of the above, please let me know.

Sincerely,



Robert G. MacLean  
President  
California American Water