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4 **BEFORE THE STATE WATER**
5 **RESOURCES CONTROL BOARD**
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7 In the Matter of the State Water Resources) Hearing Date: September 24, 2007
8 Control Board (State Water Board))
9 Hearing to consider Monterey Peninsula) Carmel River in Monterey County
10 Water Management District's (MPWMD))
11 Petitions to Change Permits 7130B and)
12 20808 (Applications 11674B and 27614))
13
14

15 **EXHIBIT HS-10**

16 **MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**

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18 **U.S. Army Right-of-Entry letter dated September 19, 2007**
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REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
FORT ORD OFFICE, ARMY BASE REALIGNMENT AND CLOSURE
P.O. BOX 5008, BUILDING #4463 GIGLING ROAD
MONTEREY, CALIFORNIA 93944-5008

RECEIVED

SEP 22 2006

MPWMD

Directorate of Base Realignment and Closure

SEP 19 2006

Monterey Peninsula Water Management District
Attn: Mr. David Berger, General Manager
5 Harris Court, Building-G
Monterey, CA 93942-0085

Dear Mr. Berger:

Enclosed is the Right-of-Entry for you Aquifer Storage and Recovery Project on General Jim Moore Boulevard. Please sign and return it to the BRAC office for final processing. If you have questions, my point of contact is Ms. Juliette Sager who may be reached at 831-242-7905.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen M. Fisbeck".

Karen M. Fisbeck
Director, Base Realignment and Closure

Enclosure



DEPARTMENT OF THE ARMY
FORT ORD OFFICE, ARMY BASE REALIGNMENT AND CLOSURE
P.O. BOX 5008, BUILDING #4463 GIGLING ROAD
MONTEREY, CALIFORNIA 93944-5008

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SEP 22 2006

MPWMD

REPLY TO
ATTENTION OF:

Base Realignment and Closure

SEP 19 2006

David A. Berger
General Manager
Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey CA 93942-0085

Subject: Right-of-Entry for Monterey Peninsula Water Management District Aquifer Storage and Recovery Project

Dear Mr. Berger:

This letter serves as a Right-of-Entry pending compliance with the enclosed terms and conditions for clearing vegetation, construction, and other activities associated with development of the Phase 1 Aquifer Storage and Recovery Project (ASR) on Army Parcel E34 (Property).

In addition to compliance with the enclosed terms and conditions, a construction site plan for the well area shall be submitted and approved by this office prior to any ground disturbing activities.

1. USE OF THE PROPERTY

a. The sole purposes for which the Property and any improvements thereon may be used, in the absence of prior written approval of the Base Realignment and Closure (BRAC) office for any other use, is for the use designated in or consistent with the approved Fort Ord Reuse Plan dated June 13, 1997, and the mitigating measures in the Final Monterey Peninsula Water Management District Aquifer Storage and Recovery Project Environmental Impact Report/Environmental Assessment, submitted and approved by the Monterey Peninsula Water Management District (MPWMD), which has been analyzed in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 to 4370d (NEPA). The Project consists of a new injection/extraction well and approximately 500 ft of buried pipeline connecting to a new 16-in pipeline which will transport water through an existing culvert to the Cal-Am temporary pipeline located west of General Jim Moore Boulevard. An existing well and buried 12-in pipeline are currently authorized in Easement DACA05-9-00-605 and known as the Santa Margarita Test Injection Well Easement. This Right-of-Entry precedes issuance of an amendment to the authorize Easement. Upon completion of construction, MPWMD shall furnish the Army Corps of Engineers with "as built" drawings to facilitate the amendment of Easement DACA05-9-00-605.

b. Prior to approval of any changes in use, the MPWMD shall furnish, at its expense, any additional environmental analyses and documentation deemed necessary by the Government to comply with the National Environmental Policy Act of 1969, as amended, and implementing

2. TERM

This Right-of-Entry shall become effective pending compliance with the enclosed terms and conditions and when signed by both parties and will be terminated under the condition on TERMINATION, REVOCATION AND DEFAULT, when an Easement is issued by the Corps of Engineers, or when the Property transfers out of Federal ownership, whichever is sooner.

3. TERMINATION, REVOCATION AND DEFAULT

a. Termination. The MPWMD shall fail to comply with any terms or conditions of this Right-of-Entry and not cure such failure within ninety (90) days after written notice thereof, unless said non-compliance is the subject of a shorter notice given by a Federal, state, or local governmental agency, in which case the shorter notice shall apply.

b. Revocation. The MPWMD and/or any sublessee are charged at all times with full knowledge of all the conditions, limitations, and requirements of this Right-of-Entry, and the necessity for correction of defaults and non-compliance. Upon the occurrence of any of the aforesaid events of default, the Government shall have the option to revoke this Right-of-Entry, in which event MPWMD shall immediately vacate the Property. If MPWMD fails to do so, the Government may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Property and expel or remove MPWMD and any other person who may be occupying the Property or any part thereof, without being liable for any claim of damages therefore; MPWMD hereby agreeing to pay to the Government on demand the amount of all loss and damage which the Government may suffer by reason of such termination. Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided, including closure of the Property or temporary suspension of activities under the Right-of-Entry, or any other remedy provided by law or at equity, nor shall pursuit of any remedy herein provided constitute an election of remedies, thereby excluding the later election of an alternate remedy. Forbearance by the Government to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default.

c. Sublessees. Any sublessee is to be subject to the conditions and terms of this Right-of-Entry, nevertheless, should default and non-compliance described in subcondition b. above stem from the activities of a sublessee, MPWMD is responsible for ensuring compliance, either by corrective action itself or through the sublessee. If the MPWMD is making diligent, good faith efforts to obtain corrective action and compliance by the sublessee, to the satisfaction of the Government, then the Government's exercise of rights under subcondition b. will only be for that part of the Property under the control of the sublessee.

4. APPLICABLE LAWS AND REGULATIONS

a. The MPWMD shall comply with all applicable federal, state, and local laws, ordinances, regulations and standards that are or may become applicable to their activities on the Property, including, but not limited to, those regarding the environment, construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. Additional compliance conditions are included in the condition on ENVIRONMENTAL PROTECTION.

5. UTILITIES

The United States shall not furnish utilities or services.

6. PROTECTION OF PROPERTY

The MPWMD shall keep the Property in good order and in a clean, safe condition by and at its expense. The MPWMD shall be responsible for any damage that may be caused to property of the United States by its activities and/or its sublessees or licensees under this Right-of-Entry, and shall exercise due diligence in the protection of the property against fire or damage from any and all other causes. Any property of the United States damaged or destroyed incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the MPWMD to a condition satisfactory to Government, or at the election of Government, reimbursement made therefore by the MPWMD in an amount necessary to restore or replace the property, except personal property, to a condition satisfactory to Government.

7. INSURANCE

a. The MPWMD may require any sublessees, assignees, transferees, or successors, as joint and several responsible parties with the MPWMD for those portions of the Property under their control, to maintain and carry at their expense portions of the insurance requirement.

b. The MPWMD's insurance status shall not eliminate the requirement for its sub-lessees to have insurance from a reputable insurance carrier as set out above or to also be self-insured, if applicable.

8. RIGHT TO ENTER

a. The right is reserved to the United States, its officers, agents, and employees to enter upon the Property with reasonable notice and for any purpose necessary or convenient in connection with Government purposes to make inspections, to make any other use of the lands as may be necessary in connection with Government purposes, and the MPWMD shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

b. Additional rights to enter are reserved in the condition on ENVIRONMENTAL PROTECTION.

9. HOLD HARMLESS AND INDEMNITY

a. Upon execution of this Right-of-Entry, the MPWMD agrees to assume all risks of loss or damage to property and injury or death to persons due to or incident attributable or incident to the condition or state of repair of the Property or to its possession and/or use of the Property or the activities conducted under this Right-of-Entry. Subject to subsection 9.e. below, the MPWMD expressly waives all claims against the United States of America for any such loss, damage, personal injury or death caused by or occurring as a consequence of such condition, possession and/or use of the Property by the MPWMD, or the conduct of activities or the performance of responsibilities under this Right-of-Entry by the MPWMD. Subject to subsection 9.e. below, the MPWMD further agrees to indemnify and hold harmless the United States of

Subject: Right-of-Entry for Monterey Peninsula Water Management District Aquifer Storage and Recovery Project

America, the MPWMD, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death or property damage resulting from, related to, caused by or arising out of the possession and/or use of the Property by the MPWMD. The Government will give the MPWMD notice of any claim against it covered by this indemnity as soon after learning of such claim as practicable.

b. The MPWMD shall indemnify and hold harmless the United States of America from any costs, expenses, liabilities, fines, or penalties resulting from the MPWMD's discharges, emissions, spills, storage, disposal, or any other action by the MPWMD giving rise to United States of America liability, civil or criminal, or responsibility under Federal, state or local environmental laws.

c. Subconditions a. and b. of this Condition and the obligations of the MPWMD hereunder shall survive the expiration or termination of the Right-of-Entry and the conveyance of the Property. The MPWMD's obligation hereunder shall apply whenever the United States incurs costs or liabilities for the MPWMD's actions giving rise to liability under this condition.

d. In allowing entry upon the Property, the United States recognizes its obligation to hold harmless, defend, and indemnify the MPWMD and any successor, assignee, transferee, lender, or sublessee of the MPWMD as provided for in Section 330 of the Department of Defense Authorization Act of 1993, as amended, and to otherwise meet its obligations under the law.

e. Nothing provided in this Condition is intended to, nor shall it be construed to waive any rights either the Government or the MPWMD have under existing Federal, state or local law.

f. Any sublessees, assignees, transferees, or successors shall be jointly and severally responsible with the MPWMD for those portions of the Parcels under their control.

10. NON-DISCRIMINATION

The MPWMD shall not discriminate against any person or persons or exclude them from participation in the MPWMD's operations, programs or activities conducted on the Property, because of race, color, religion, sex, age, handicap or national origin.

11. SUBJECT TO MINERAL INTERESTS

All mineral rights and interests are reserved to the United States of American.

12. PROHIBITED USES

a. The MPWMD shall not permit gambling, except for state lottery tickets in accordance with applicable state and local laws and regulations, on the Property or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the Property or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the Property any activity which would constitute a nuisance.

b. The MPWMD shall not construct or place any structure, improvement, or advertising sign or allow or permit such construction or placement without prior written approval of the BRAC office.

c. The MPWMD shall not sell, store or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors on the premises.

13. ENVIRONMENTAL PROTECTION

a. The MPWMD will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of the MPWMD, the MPWMD shall be liable to restore the damaged resources. The MPWMD shall not discharge waste or effluent from the Property in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance. The MPWMD must obtain approval in writing from The BRAC office before any pesticides or herbicides are applied to the Property.

b. The MPWMD shall be responsible for obtaining and paying for any environmental or other permits required for its operations under the Right-of-Entry, independent of any existing permits.

c. The United States's rights under this Right-of-Entry specifically include the right for United States officials to inspect, upon reasonable notice, the Property for compliance with environmental, safety, and occupational health laws and regulations, whether or not the United States is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The United States normally will give the MPWMD twenty-four (24) hours prior notice of its intention to enter the Property unless it determines the entry is required for safety, environmental, operations, or security purposes. The MPWMD shall have no claim on account of any entries against the United States or any officer, agent, employee, or contractor thereof.

d. The United States acknowledges that the former Fort Ord has been identified as a National Priorities List (NPL) Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) site. The MPWMD acknowledges that the Government provided MPWMD with a copy of the Fort Ord Federal Facility Agreement (FFA) entered into by the United States EPA Region IX, the State of California, and the Department of the Army as part of their Easement number DACA05-0-09-605.

The Government will provide the MPWMD with a copy of any amendments thereto. The MPWMD agrees that should any conflict arise between the terms of the FFA, as it presently exists or may be amended, and the provisions of this Right-of-Entry, the terms of the FFA will take precedence. The MPWMD further agrees that notwithstanding any other provision of the Right-of-Entry, the Government assumes no liability to the MPWMD should implementation of the FFA interfere with the MPWMD'S use of the Property. The MPWMD shall have no claim on account of any such interference against the United States or any officer, agent, employee or contractor thereof.

e. The Government, EPA and the DTSC, their officers, agents, employees, contractors and subcontractors have the right, upon reasonable notice to the MPWMD, and to parties in possession, to enter upon the Property for purposes consistent with the applicable provisions of the FFA, and for the following purposes:

Subject: Right-of-Entry for Monterey Peninsula Water Management District Aquifer Storage and Recovery Project

(1) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, soil boring tests and other activities related to the Fort Ord Installation Restoration Program (IRP), FFA or Interagency Agreement (IAG);

(2) to inspect field activities of the Government and his employees, agents, contractors and subcontractors in implementing that IRP, FFA or IAG;

(3) to conduct any test or survey required by EPA or DTSC relating to the implementation of the FFA or environmental conditions at the Property, or to verify any data submitted to the EPA or DTSC by the Government relating to such conditions; and

(4) to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the IRP, FFA, or IAG, including, but not limited to, monitoring wells, soil removal, pumping wells and treatment facilities.

f. The MPWMD agrees to comply with the provisions of any health or safety plan in effect under the IRP or the FFA during the course of the above-described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the MPWMD. The MPWMD shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof. In addition, the MPWMD shall comply with all applicable Federal, state and local occupational safety and health regulations.

g. The MPWMD shall comply with the requirements of 10 U.S.C. 2692(b)(9) to obtain the Government's approval for the storage, treatment, or disposal of toxic or hazardous materials not owned by the Department of Defense on the Property.

h. The MPWMD shall comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act (RCRA), or its California equivalent and any other applicable laws, rules or regulations. Except as specifically authorized by the Government in writing, the MPWMD must provide, at its own expense, such hazardous waste management facilities, including storage, treatment or disposal facilities, complying with all applicable laws and regulations. Hazardous waste management facilities of the Government will not be available to the MPWMD. Any violation of the requirements of this provision shall be deemed a material breach of this Right-of-Entry.

i. Any of Government's accumulation points for hazardous and other wastes will not be used by the MPWMD. The MPWMD will not permit its hazardous waste to be commingled with hazardous waste of the Government.

j. The MPWMD shall have a plan approved by the Government for responding to hazardous waste, fuel and other chemical spills prior to commencement of operations on the Property, which approval shall not be unreasonably withheld or delayed. Such plan shall be independent of the Former Fort Ord and, shall not rely on use of installation personnel or equipment. Should the Government provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on the request of the MPWMD, or because the MPWMD was not, in the opinion of the Government, conducting timely cleanup actions, the MPWMD agrees to reimburse the Government for its costs. The plan may be developed in phases as Right-of-Entry activities are identified. Sublessees shall provide to the MPWMD a

plan to cover their activities and portion of the Property prior to commencement of operations on the Right-of-Entry portion, which will be incorporated by the MPWMD into the overall plan.

k. The MPWMD shall not construct or make or permit its sublessees or assigns to construct or make any substantial alterations, additions, or improvements to or installations upon or otherwise modify or alter the Property in any way which may adversely affect the cleanup, human health, or the environment without the prior written consent of the Government. Such consent may include a requirement to provide the Government with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the United States. For construction or alterations, additions, modifications, improvements, or installations in the proximity of operable units that are part of a NPL site, such consent may include a requirement for written approval by the BRAC office.

14. NOTICE OF THE POTENTIAL FOR THE PRESENCE OF ORDNANCE AND EXPLOSIVES

a. Ordnance and explosives (OE) investigations indicate there is a potential for OE to be present because OE were used throughout the history of Fort Ord. Ground disturbing activities, including perimeter fence installation, shall be coordinated with U.S. Army Corps of Engineers Unexploded Ordnance Safety Specialist to insure appropriate construction-related precautions are taken.

c. In addition, all personnel accessing the proposed well site shall receive the Army provided OE familiarization training. This 30-minute safety training is provided by the Army at no cost to the trainee and includes a lecture on what OE might be found, the procedure to follow if something is found and "Safety Alert" brochures are also distributed. To schedule this training, please contact Lyle Shurtleff of the BRAC office at (831) 242-7919.

b. In the event the grantee, its successors, and assigns, should discover any ordnance on the property, the item shall not be disturbed. The item shall be immediately reported to the Presidio of Monterey Police Department at 831-242-7851 so that appropriate U.S. Military explosive ordnance disposal personnel can be dispatched to address such MEC as required under applicable law and regulations at the expense of the Army.

15. SOIL AND WATER CONSERVATION

The MPWMD shall take appropriate measures to prevent or control soil erosion within the Property. Any soil erosion occurring outside the premises resulting from the activities of the MPWMD shall be corrected by the MPWMD as directed by the Government.

16. HABITAT MANAGEMENT

The MPWMD shall insure all the applicable terms and conditions described in the biological opinion (1-8-04-F-25R) for the California Tiger Salamander and all the mitigation measures identified in HMP are adhered to.

This right-of-entry shall become valid when this office receives a signed copy and all terms and conditions have been met.

Subject: Right-of-Entry for Monterey Peninsula Water Management District Aquifer Storage and Recovery Project

If you have any questions or concerns, pertaining to this Right-of-Entry feel free to contact me.

Sincerely,

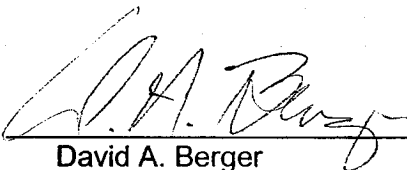


Karen M. Fisbeck
Director, Fort Ord Field Office
US Army-Base Realignment and Closure Office

Copy to: FORA, Mr. Michael A. Houlemard, Jr.
City of Seaside, Mr. Tim P.O'Halloran
Cal-Am, Mr. Steve Leonard

Signature documenting the Monterey Peninsula Water Management District concurrence with the above language:

Signature: _____



David A. Berger
General Manager

Date: _____

9-29-06