

July 10, 2002

MPWMD
Chairman Kris Lindstrom
P. O. Box 85
Monterey CA 93942-0085

Dear Chairman Lindstrom:

It has come to our attention that the Board and/or one of its standing committees have held one or more closed sessions to consider and approve the scope of work and other contract provisions for a consulting services agreement with the firms of Bold, Polisner, Maddow, Nelson & Judson (attorneys) and Whitley Burchett & Associates (engineers). We have been advised that the purpose of the agreement for engineering services is to perform a comprehensive independent review of: 1) the public wastewater reclamation project facilities in Del Monte Forest owned and operated by the Carmel Area Wastewater District ("CAWD") and the Pebble Beach Community Services District ("PBCSD") and, 2) the Pebble Beach Company's financing proposal for Phase II reclamation project improvements. We also understand that the MPWMD Board and/or one of its standing committees may receive, in one or more future closed meetings, progress reports from the engineering consultants. Please accept this, as notice that we believe such a closed meeting, if held, will be illegal under the Brown Act and subjects all members of the Board to potential criminal liability as set forth in Government Code § 54959 as well as subjecting the MPWMD to civil liability and attorney's fees pursuant to Government Code §§ 54960, 54960.1, and 54969.5.

As we understand the District rationale, the proposed closed session is scheduled pursuant to Gov. C. § 54956.9, the pending litigation exception to the Act.

Under that section, it is legal to meet with legal counsel to discuss pending or threatened litigation; however, the threat to litigate must be clear and unequivocal and not mere speculation or perception of the Board extrapolated from ambiguous language or hype presented to an agency to underscore the seriousness of a matter or of a person appearing before the Board. Closed sessions are the exception; open and public meetings are the rule.

Further, it is our understanding that the Attorney General has opined that the attorney/client privilege contained in the Brown Act is expressly quite limited, and that it has abrogated all but the express provisions contained in Gov. C. § 54965.9. The AG has opined that only those persons expressly permitted to be in a closed session may attend, and that any extraneous personnel must not be allowed. That would preclude attendance by engineers or others who may have prepared the public reports you now seek to examine in private from attending. Those reports are not attorney product, even though the engineers are reporting back through attorneys. The engineers' work is not made work product by simply having the District Counsel or the consulting attorneys hire the engineers to make the report.

If it is your claim that the District is in receipt of a written communication from a potential plaintiff threatening litigation, please accept this as a demand for a copy of that report pursuant to the Public Records Act and Gov. C. §§ 54956.9(b)(3)(C) and 54957.5.

Public funds are being used to produce this important report. According to the engineers scope of work recently provided to the reclamation project's Management Committee, the engineering consultant's reports will either essentially duplicate public information already in the hands of the District, which has been provided to the District by the CAWD and PBCSD, or the engineers will submit comments based on their analysis of the public information provided to the District by CAWD and PBCSD. Since much of the consultant's work appears to be merely a rehash of old public information, we believe strongly the public is entitled to see it without any interference, adjustment, revision, or other interference with the engineering consultant by the attorney consultant in closed sessions with the Board. The engineering consultants reports are supposed to assist the Board in making a determination regarding the Pebble Beach Company's financing proposal for Phase II reclamation project improvements, not prevent or prepare for litigation.

The District exists to serve the public. There is an inherent strong obligation to conduct your business in the public's eye. We implore you to respect the letter and the spirit of the law and review this report in an open and public forum. Thank you.

Sincerely,

James J. Nero
Acting President, DMFPO