



SAMUEL TORRES, JR., COUNTY COUNSEL

## **County of Santa Cruz**

#### OFFICE OF THE COUNTY COUNSEL

701 OCEAN STREET, SUITE 505, SANTA CRUZ, CA 95060-4068 (831) 454-2040 FAX: (831) 454-2115

#### **Assistants**

CHIEF ASSISTANTS
RAHN GARCIA
DANA McRAE

Deborah Steen
Harry A. Oberhelman III
Marie Costa
Jane M. Scott
Tamyra Rice

Ellen Aldridg
Kim Baskett
James E. Lev
Julia Hill
Shannon Sul

Pamela Fyfe

Ellen Aldridge Kim Baskett James E. Lewis Julia Hill Shannon Sullivan Sharon Carey-Stronck

May 9, 2001

Agenda: May 22, 2001

Board of Supervisors County of Santa Cruz 701 Ocean Street, Room 500 Santa Cruz, CA 95060

**Re:** County Service Area 54 (Mt. Charlie)

Dear Members of the Board:

Your Board on January 23, 2001, directed County Counsel, Auditor-Controller and Public Works to return to your Board on March 27, 2001, since deferred to today, with either an executed Memorandum of Understanding transferring the CSA 54 water system to Santa Cruz Mountains Summit West, or, in the alternative, the necessary items to commence the direct operation of that water system as of July 1, 200 1. Your Board is now in a position to approve the transfer of the CSA 54 water system to Santa Cruz Mountains Summit West. Attached to this letter is a copy of the permit from the Department of Corporations to issue shares to the water users and a specimen share certificate. Attachment 1. The shares are in the process of being distributed to the users.

Given the establishment of a mutual benefit corporation to take title to the water system and the issuance of corporation shares to all water users, the condition set forth in Resolution # 11 1-96, creating CSA 54, has been met. Your Board is now able to transfer the water system to its users. To finalize the transfer, a Memorandum of Understanding has been prepared which identifies the necessary title documents and acknowledges the financial obligation of Summit West for the balance of the purchase price for the water system (\$50,000) and county expenses incurred in administering CSA 54. Attachment 2. (The exhibits to Attachement 2 are on file with County Counsel.) CSA 54 will remain in existence until these two financial obligations have been met, approximately through

mcwwblit10.wpd

**Board of Supervisors** 

Re: County Service Area 54 (Mt. Charlie)

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fiscal year 2002-2003. The Department of Water Resources Loan will be assigned from the receiver, on behalf of Mountain Charlie Waterworks, Inc. and CSA 54, to Summit West. Attachment 3 is the DWR assignment document in draft form. The final version is being prepared by DWR and will be substantially identical to the draft.

Environmental Planning has determined that the transfer of the water system is not a project under CEQA and has issued a Notice of Exemption. Attachment 4.

A hearing is set in the receivership proceeding, *County of Santa Cruz*, *et al*, *v Mountain Charlie Waterworks, Inc.*, *et al* (Case # CV 130326), for June 25, 2001, to approve the receiver's final report and accounting, terminate the receivership and dismiss that enforcement action.

IT IS THEREFORE RECOMMENDED, that your Board on behalf of County Service Area 54 approve the transfer of the former Mountain Charlie water system to Santa Cruz Mountains, Summit West, and authorize the Board Chairman to execute the attached Memorandum of Understanding and all related documents necessary to transfer the water system, and the DWR loan assignment.

IT IS FURTHER RECOMMENDED that your Board authorize County Counsel to request the termination of the receivership proceeding in *County of Santa Cruz, et al. v. Mountain Charlie, et al.*, Superior Court Case No. CV 130326, and dismiss that action.

Very truly yours,

SAMUEL TORRES, JR., COUNTY COUNSEL

By: /tany (1. Cherhulmum)
HARRY A. OBERHELMAN III

**Assistant County Counsel** 

RECOMMENDED:

SUSAN A. MAURIELLO

County Administrative Officer

cc: CAO

Auditor-Controller

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**Board of Supervisors** 

Re: County Service Area 54 (Mt. Charlie)

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Public Works
Environmental Health Services
MacCauley Small, Esq.
Al McBride
Terese Kohler
County Counsel



## STATE OF CALIFORNIA BUSINESS, TRANSPORTATION AND HOUSING AGENCY DEPARTMENT OF CORPORATIONS

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File No. 506-2262

#### PERMIT

THIS PERMIT IS PERMISSIVE ONLY
AND DOES NOT CONSTITUTE A RECOMMENDATION OR ENDORSEMENT
OF THE SECURITIES PERMITTED TO BE ISSUED

Issuer: Santa Cruz Mountains Summit West, Inc.

is hereby qualified to offer, sell and issue the securities described in its application filed January 10, 2002, and any amendments and supplements thereto to the datehereof, to the persons described in said application, for the considerations, uses and purposes, and in the manner set forth in said application. This qualification is effective far 12 months from the date hereof.

Dated: San Francisco, California

FEB 2 1 2001

WILLIAM KENEFICK Acting Commissioner of Corporations

Roger Borgen

Senior Corporations Counsel

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ATTACHMENT , Page of



## SECRETARY OF STATE CERTIFICATE OF STATUS DOMESTIC CORPORATION

I, BILL JONES, Secretary of State of the State of California, hereby certify:

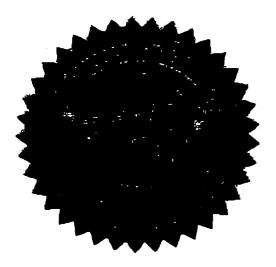
That on the 12th day of November, 1999, SANTA CRUZ MOUNTAINS SUMMIT WEST, INC. became incorporated under the laws of the State of California by filing its Articles of Incorporation in this office; and

That no record exists in this office of a certificate of dissolution of said corporation nor of a court order declaring dissolution thereof, nor of a merger or consolidation which terminated its existence; and

That said corporation's **corporate** powers, rights and privileges **are** not suspended on the records of this office; and

That according to the records of this office, the said corporation is authorized to exercise all its corporate powers, rights and privileges and is in good legal standing in the State of California; and

That no information is available to this office an the financial condition, business activity or practices of this corporation.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of March 8, 2001.

BILL JONES Secretary of State

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ATTACHMENT\_

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NF-24 A (Flov. 1-88)

OSP 98 21490 (



STATE OF CALIFORNIA

FRANCHISE TAX BOARD

FIO Box 942857 Stactamento, CA 94287

> In Reply Refer to:357;SIM Date :03/08/01

SACRAMENTO ATTOKNEYS' SERVICE 1905 TWELFTH ST., SUITE F SACRAMENTO, CA 95814

Corporation Name

SANTA CRUZ MOUNTAINS SUMMIT WEST. INC.

Corporation Number !2182264

- X 1. The above named corporation is in good standing with this agency.
  - 2, Information on record with this agency indicates the above corporation is not qualified to transact business in California.
  - The above corporation was incorporated or qualified on
  - 4. The above corporation has an unpaid liability af \$ for income year ended .
  - 5. Our records do not show that the above corporation filed franchise tax returns for the income years
  - 6, The above corporation was

effective

- 7. The above corporation's current address on record with this agency is:
- 8. We have no current information on the above corporation.

Comments:

Representative

#### TELEPHONE ASSISTANCE

Cut regular to lifece telephone service is available from 7:00 n.m. until 8:00 p.m. Monday through Friday from the first working day in January through April 15. The best times to call are between 7:00 and 10:00 in the morning and between 5:00 and 8:00 in the evening. Service is also available from 8:00 a.m. through 5:00 p.m. on the two Soundays prior to April 15. After April 15, service is available Monday through Friday, proven 8:00 a.m. and 5:00 p.m.

FTB 4263(REV 5-95)

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MEMORANDUM OF UNDERSTANDING
BETWEEN COUNTY OF SANTA CRUZ ON BEHALF OF
COUNTY SERVICE AREA 54 AND
SANTA CRUZ MOUNTAINS, SUMMIT WEST, INC.
GOVERNING THE TRANSFER OF WATER DISTRIBUTION SYSTEM
(MOUNTAIN CHARLIE WATER SYSTEM)

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This memorandum of understanding is entered into by and between the County of Santa Cruz on behalf of County Service Area 54, hereinafter referred to as County, and Santa Cruz Mountains Summit West, Inc., a California non-profit Mutual Benefit Corporation, doing business as a Mutual Water Company within the meaning of California Corporations Code § I 4300, hereinafter referred to as Summit West, and is made with respect to the following recitals.

Whereas, County acquired the ownership of that certain domestic water distribution system known as the Mt. Charlie water system from Mt. Charlie Waterworks, Inc., (MCWW) the description of which is contained in the Bill of Sale, attached and incorporated herein by this reference as Exhibit A, and including described, non prescriptive easements, as set forth in the Grant Deed, attached and incorporated herein by this reference as Exhibit B, and non specifically described non prescriptive easements and all prescriptive casements as set forth in the Quitclaim Deed, attached and incorporated herein by this reference as Exhibit C, and which are collectively referred to herein as the "Water System"; and,

Whereas, Santa Cruz County Service Area 54 was formed by the Board of Supervisors on April 23, 1996 by Resolution No, 11 1-96 for the purposes of acquiring and operating the

#### MCWW Water System; and

Whereas the Board of Supervisors in the Resolution forming CSA 54 provided that the Water System could be transferred by a method calculated to return the water system to its customers or an organization formed by its customers; and

Whereas, Summit West was formed by a group of the customers of the Water System as a non-profit mutual benefit water corporation and Summit West has secured a permit from the California Commissioner of Corporations authorizing it to issue voting membership shares to each of the then Water System users; and

Whereas, Summit West has requested that County transfer ownership of the Water System to Summit West; and

Whereas, County has incurred certain obligations and costs in connection with the acquisition of the Water System and the administration of **CSA** 54; and

Whereas, County wishes to transfer the Water System to an organization which is representative of the users in conformance with the aforementioned Resolution No. 11 l-96.

Now therefore based on the mutual consideration and the obligations and benefits described herein the parties do agree as follows:

1. County transfers ownership of the Water System to, and Summit West accepts the ownership of the Water System (including all cash on hand, deposits, accounts receivable and loan reserves) in an "as is" condition and without warranty. County shall tender to Summit West ownership of the Water System by title documents in the form of a bill of sale (Exhibit A), grant deed (Exhibit B), and quitclaim deed (Exhibit C), without title insurance.

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- 2. Upon the tender of title documents, Summit West hereby assumes all obligations and liabilities of the Water System whenever incurred and regardless of ownership, including, but not limited to, employee compensation, vendor's claitns, utility charges, water purchase and wheeling charges. Summit West's assumption of liabilities shall be effective without any written documentation, except as specifically stated in this agreement.
- 3. Summit West waives any and all claims and causes of action for damage, or injury which it may now or hereafter have against County arising out of the actions or inactions, whenever discovered, of the Court appointed receivers in that certain action entitled *County of Santa Cruz*, et al. v. Mt. Charlie Waterworks, Inc., et al., Santa Cruz County Superior Court No. CV 13032, including, but not limited to, the failure to prepare and submit Receiver's accounts or reports, or accurate and complete Receiver's accounts or reports, the management of the receivership estate, statutory claims made by employees or contractors of the receivership estate, payment of federal and state taxes of any kind.
- 4. Summit West shall assume the obligation of Mountain Charlie Waterworks, Jnc. under Department of Water Resources (DWR) 'Loan No. E 5 1407. Summit West agrees to take all steps and to execute all documents, necessary to become the responsible entity under DWR Loan No. E 51407 prior to the tender of title documents, Notwithstanding that certain document entitled "Memorandum of Understanding, Mountain Charlie Water Distribution System", dated July 22, 1997, Summit West acknowledges that County has no

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obligation under DWR Loan No. **E** 5 1407. Summit West shalt deliver a copy of all executed DWR loan assumption documents to County.

5. Summit West hereby acknowledges responsibility for the obligation to pay the purchase price for the acquisition of the Water System from Mt. Charlie Waterworks, Inc., as set forth in that certain Stipulation to Enter Judgment, Judgment, filed November 22, 1999, in that action entitled County of Santa Cruz on behalf of County Service Area 54 v. ML Charlie Waterworks, Inc., Santa Cruz County Superior Court Case No. CV 133807 (Judgment). Summit West shall reimburse County for the balance due under said Judgment in favor of Mt. Charlie Waterworks, Inc., which at this time amounts to \$50,000, plus interest at 7.5% from November 22, 1999. Summit West agrees that CSA 54 may continue to assess a service charge of at least \$300 per year per parcel served, by the Water System, for the purpose of **funding** the installment payments required under that Judgment; collection of this service charge **shall** incrementally satisfy the responsibility of Summit West to CSA 54 under this paragraph 5. At any time, Summit West may expressly assume the obligation under the aforementioned Judgment in place of CSA 54 by an appropriate written assumption. Any such assumption shall be evidenced by a written assignment executed by Mt. Charlie Waterworks, Inc., or its authorized designee. In the event that Summit West assumes the obligation under the aforementioned Judgment, and upon the complete satisfaction of that Judgment, Summit West shall promptly secure a Satisfaction of Judgment, executed by the judgment creditor, and filed with the Superior Court and recorded with the County Recorder.



- 6. Summit West agrees to reimburse County for its fees, expenses and staff costs incurred by County's County Counsel office, Auditor-Controller's Office and Public Works Department in connection with the acquisition of the Water System, and its administration thereafter, and in connection with the administration of CSA 54, to the extent not reimbursed through CSA 54 service charges. Summit West acknowledges that the preparation of title documents, professional survey services, and other services necessary to transfer the water system herein, will cause County to incur additional staff costs and Summit West agrees to reimburse County for these additional costs, upon delivery by CSA 54 to Summit West of a written invoice. County may obtain reimbursement from CSA 54 service charges.
- 7. Summit West acknowledges and agrees that CSA 54 shall continue in **existence** and **authorizes** the existing service charge in the amount of \$300 per year per parcel. 'The existing service charge shall remain in effect until such time as the following have been fully paid: a) All fees, expenses and staff costs incurred in connection with the administration of **CSA** 54, the acquisition of **the** Water System and its administration, and the transfer of the Water System, referenced in paragraph 6 herein, and b) The acquisition price for the Water System, referenced in paragraph 5 herein.
- 8. **The** parties agree to exchange title documents to transfer the Water System upon or within 30 days of the execution of this Memorandum of **Understanding**.
- 9. Summit West shall exonerate, indemnify, defend and hold harmless County and its officials and employees **from** and against any and all **claims**, demands, losses, **damages**, or **other** liability for injury to or death of persons, or property damage or financial

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loss, as a result of or in any manner connected with the operation of the Water System at any time during County's ownership of the Water System, which began on November 22, 1999, including, but not limited to, claims for **repair**, claims for taxes, and maintenance expenses and claims for personal injury.

- 10. The representative of Summit West authorized to receive the title documents and any other notice is: Albert **P**. McBride, 22721 Oak Flat Road, Los Gatos, CA 95030.
- 11. The representative of County authorized to **receiver** any notice or document required under this Memorandum is Harry A. Oberhelman, **III**, Office of County Counsel, 701 Ocean Street, Room 505, Santa **Cruz**, CA 95060.

Dated: 4/18/01	ALBERT P. McBRIDE, President		
	Santa Cruz Mountains, Summit West, Inc.		
Dated:	to a land of the property of the same		
	TONY CAMPOS, Chairman		
	Board of Supervisors		
	County of Santa Cruz		

Approved as to form:

F. MCCAULEY SMALL, JR., Esq.

Attorney for Santa Cruz Mountain& Summit West, Inc.

Approved as to form:

HARRY A. ORFRHELMAN, III

Assistant County Counsel

5/8/01

#### AGREEMENT FOR ASSIGNMENT

## OF LOAN UNDER THE CALIFORNIA SAFE DRINKING WATER BOND LAW OF

RE: CONTRACT NO. Amendment No. A

### WITH CONSENT OF THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES

**BETWEEN** 

(CURRENT CONTRACT NAME -ASSIGNOR)

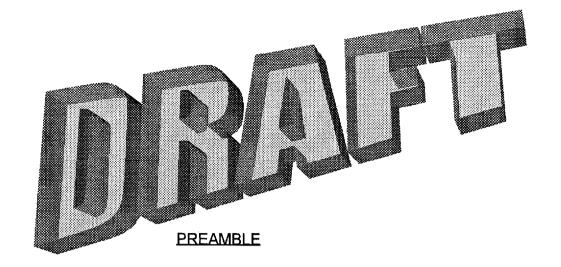
AND .

ASSIGNMENT TO (NEW AGENCY -ASSIGNEE)



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ATTACHMENT 3, Page 1 of

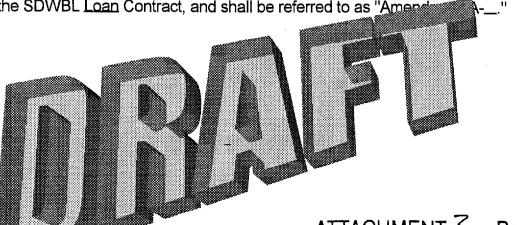


This Assignment Agreement is entered into between the State of California (the "State"), acting by and through its Department of Water Resources ("DWR"), Original Contractor ("Assignor"), a (corporation public utility, etc.) and the New Agency ("Assignee"), a (corporation public utility, etc.)

#### **RECITALS**

- 1. The State and the Assignor entered into a <u>loan</u> contract, No. E. <u>dated</u> The contract was for a <u>loan</u> by the State to the Assignor under the California Safe Drinking Water Bond Law of \_\_\_ ("SDWBL"), in an amount not to exceed \$\_\_\_\_\_. (The contract is hereinafter referred to as the "SDWBL <u>Loan</u> Contract", and is attached hereto and incorporated herein by reference as Exhibit "A'.) The purpose of the SDWBL <u>Loan</u> Contract was to finance an improvement project to bring the Assignor's water supply and distribution system in compliance with federal and State drinking water quality standards.
- 2. Article A-17 of the SDWBL Loan Contract between the State and Assignor prohibits any sale, transfer, or encumbrance of any portion of the project or associated real or personal property without prior permission of the State.
- 3. On <u>(date)</u>, the Assignee entered into an agreement with the Assignor to assume in full the rights and obligations under the SDWBL <u>Loan</u> Contract once the project was completed and debt service associated with the construction of the water system retired.
- 4. As of (date), loan/grant funds in the amount of \$\_\_\_\_\_ had been disbursed by the State to Assignor under the terms of the SDWBL Loan Contract.

5. This Assignment Agreement shall be incorporated into and made a part of the SDWBL Loan Contract, and shall be referred to as "Amenda"..."



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#### **AGREEMENT**

- 6. Therefore, the State, and the Assignee agree as follows:
- a. The State hereby consents to the Assignee assignment of the SDWBL Loan Contract and to the transfer of the Assignor's property to the Assignee;
- b. The State agrees to substitute the Assignee in place of the Assignor with respect to the SDWBL Loan Contract:
- c. The Assignee promises to perform the obligations described in the SDWBL Loan Contract, including all amendments thereto, and further assumes all rights and duties thereunder:
- d. The State does hereby release and discharge the Assignor from the obligations described in the SDWBL Loan Contract:
- e. The Assignee hereby assumes any contracts or agreements between the State and Assignor which relate to the subject matter of the SDWBL Loan Contract, whether made by the Assignor prior to the execution of this Assumption Agreement, pursuant to, or in conjunction with the SDWBL Loan Contract:
- 7. Section \*\* of the SDWBL Loan Contract is hereby deleted in its entirety and amended to read as follows:

#### Section \*\* PROJECT OFFICIALS AND NOTICES

a. The "State Project Manager" shall be the Chief, Division of Fiscal Services of the Department of Water Resources.

The State Project Manager shall be the State's representative for administration of the Contract and shall have authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment for work performed under the Contract.

Supplier Project Director shall b. The "Supplier Project Direct the a ministration of the Contract and shall have full be the Supplier's representative authority to act or II communation giver to the Project Director anen of t opker. u as Dind 95 olie

ATTACHMENT3, Page3 of6

- c. Any claim that Supplier may have regarding the performance of this agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the Director, Department of Water Resources, within thirty days of its accrual. State and Supplier shall then attempt to negotiate a resolution of such claim and process an amendment to this agreement to implement the terms of any such resolution.
- d. Either party may change its Project Manager or Project Director upon written notice to the other party.
  - e. Notices required to be given in writing by the Supplier under this Contract shall be sent to:

State of California Department of Water Resources Program Manager Bond Financing and Administration Office Post Office Box 942836, Room 804 Sacramento, California 94236-0001

- f. Notices required to be given in writing by the State under this Agreement or under the terms of the SDWBL Loan Contract as amended shall be sent to:
- g. A change of address for delivery of notice may be made by either party by written notice of such change of address to the other party.

a. All such notices shall be enclosed in a properly addressed, postage prepaid envelope and deposited in a United States Post Office for stered or certified mail.

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#### **GENERAL PROVISIONS**

- 8. The effective date of this Assignment Agreement shall be the date of acquisition by the Assignee of the utility property of the Assignor, which date is deemed to have occurred on \_\_\_\_\_.
- 9. All other terms of the SDWBL <u>Loan</u> Contract, except as amended herein, shall remain in full force and effect.
- 10. Each of the parties hereto agrees to execute any and all documents necessary to effectuate the intent and purpose of this Assignment Agreement.
- 11. This Assignment Agreement shall be binding upon the successors and assigns of each of the parties hereto.
- 12. In the event of any conflict or inconsistency between the provisions of this Assignment Agreement and the SDWBL <u>Loan</u> Contract, the provisions herein shall control in all respects.
- 13. This Assignment Agreement shall be governed by the laws of the State of California.
- 14. This Assignment Agreement constitutes the only existing and binding agreement among the parties regarding the subject matter of this assignment of the SDWBL Loan Contract, and the parties acknowledge that there are no other warranties, promises or representations of any kind, express or implied, upon which the parties have relied in entering this agreement, or as to future relationships of the parties, except as expressly set forth herein.
- 15. The signatories to this Assignment Agreement, on behalf of all parties hereto, warrant and represent that they have authority to execute this Assignment Agreement and to assume or release the rights and obligations referred to herein.

Approved as to Legal Form and Sufficiency:

STATE OF CALIFORNIA Department of Water Resources



By: Chief Counsel Department of Water Resources	By: Chief, Division of Fiscal Services Department of Water Resources
Date:	Date:
(PRINT ASSIGNOR'S NAME)	(PRINT ASSIGN 'S NAME)
By:	Ву:
Print Name	Print Name
Title:	Title:
Date:	Date:



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# NOTICE OF EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT



The Santa Cruz County Planning Department has reviewed the project described below and has determined that it is exempt from the provisions of CEQA as specified in Sections 15061 - 15329 of CEQA for the reason(s) which have been checked on this document.

Application Number: N/A

В.

Assessor Parcel Number: various!

Project Location: Mountain Charlie Road, Hutchinson Road, Old Ranch Road, Oak Flat Road, Debbie

Road, Rudy Road, Old Japanese Road and Glenwood Road.

**Project Description:** Proposal by County Service Area 54 to transfer ownership of the former Mt. Charlie water distribution system to Santa Cruz Mountains, Summit West, a non profit mutual benefit corporation. This transfer from public to private ownership is consistent with the enabling mandate of County Service Area 54 since Summit West is wholly owned by the approximate 138 water system users. The water system is presently being operated by Summit West. The water system will continue under the regulatory jurisdiction of the County of Santa Cruz as a state small water system.

**Person or Agency Proposing Project:** Santa Cruz County Department of Public Works, County Service Area 54.

X - The proposed activity is not a project under CEQA Guidelines, Sections 1928 and 501.

Ministerial Project involving only the use of fixed standards or objective measurements

Staff Contact and Phone Number: Susanne Rogberg 454-2378

Lead Agency Other Than County:

**Environmental Coordinator:** 

		without personal judgement.		
C.		Statutory Exemption other than a Minist	terial Project.	
		Specify type: Emergency ( CEQA Guidelin	nes Section 1	5269)
_				
D.	. —	ical Exemption		
	<b>_</b> 1.	Existing Facility	17.	Open Space Contracts or
	2.	Replacement or Reconstruction		Easements
	_ 3.	New Construction of Small	18.	Designation of Wilderness Areas
		Structures	19.	Annexation of Existing Facilities/
	4.	Minor Alterations to Land		Lots for Exempt Facilities
	_ 5.	Alterations in Land Use	20.	Changes in Organization of Local
		Limitation		Agencies
	6.	Information Collection	21.	Enforcement Actions by Regulatory
	<b>-</b> 7.	Actions by Regulatory Agencies	<del></del>	Agencies
	_	for Protection of the	22.	Educational Programs
		Environment	23.	Normal Operations of Facilities
	8.	Actions by Regulatory Agencies		for Public Gatherings
	<del></del>	for Protection of Nat. Resources	24.	Regulation of Working Conditions
	9.	Inspection	<u> </u>	Transfers of Ownership of
	10.	Loans		Interests in Land to Preserve
	11.	Accessory Structures		Open Space
	12.	Surplus Govt. Property Sales	26.	Acquisition of Housing for Housing
	13.	Acquisition of Land for Wild-		Assistance Programs
	_	Life Conservation Purposes	27.	Leasing New Facilities
	14.	Minor Additions to Schools	28.	Small Hydroelectric Projects at
	_ _ 15.	Functional Equivalent to EIR		Existing Facilities
	16.	Transfer of Ownership of	29.	Cogeneration Projects at Existing
		Land to Create Parks		Facilities

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