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June 2, 2005

VIA TELECOPIER AND U.S. MAIL

James P. Walsh, Esq.
Davis Wright Tremaine LLP
One Embarcadero Center, Suite 600
San Francisco, California 94111-3611

Re: MARS Cable Project/ACSF

Dear Mr. Walsh:

Thank you for your letter of May 20, responding to mine of April 20, concerning our respective clients' efforts at reaching a mutually acceptable agreement with respect to the MARS Cable installation. MBARI is pleased to see that your client wishes to continue with the effort to reach agreement, and agrees that continued discussions with a goal of reaching agreement are merited.

MBARI has no objection to involving outside agency representatives in the discussion, particularly if those representatives have been involved in the approval process for the MARS Cable. If you plan to invite outside agency representatives MBARI believes it would be important to invite representatives of the National Marine Sanctuary, staff members of the California Coastal Commission, and representatives of the California State Lands Commission to participate in the discussion.

We should be able to schedule a meeting in a short time frame in the Monterey Bay area, if all of us work toward that end. Let us know when you and your clients are available and we will undertake to arrange the time and place of the meeting.

Our client's specific observations and comments on the form and content of the proposed agreement follow:

1. We are in agreement on this issue.
2. The intent of this language is to make available to MBARI such information as the fishermen may have at any given time on any matters covered by the provision.

PHONE 831-424-1414

FROM MONTEREY 831-372-7525

FAX 831-424-1975

333 SALINAS STREET POST OFFICE BOX 2510 SALINAS, CA 93902-2510

3. We are puzzled by your clients' objection to the suggestion that the meetings be held at least once annually. The intent is to minimize the impact of meetings on your clients, while at the same time ensuring that regular meetings occur. However, nothing in the suggested language limits the meetings to once a year.

While MBARI would be willing to meet more often, MBARI will not pay the meeting participants to attend. Of course, if funds are available from some source to compensate meeting attendees, MBARI certainly has no objection to those funds being used for that purpose, so long as MBARI's funds or funding are not involved.

There is to MBARI's knowledge no payment made to "those who review grants and participate in review procedures sponsored by the National Science Foundation". Those participants volunteer their time as part of their civic responsibilities to ensure the proper expenditure of public funds.

Lastly, MBARI views an elaborate meeting structure and schedule as unnecessary, given the size and nature of this project.

Moreover, other methods of communication to give and receive data can help prevent cable snags and other problems. E-mail and voice message services could provide the information immediately, instead of waiting for a scheduled meeting.

4. MBARI has an existing 24-hour fully-staffed hotline in place which should fully meet the needs for any notification of any injury to the cable. Its operation is substantially the same as hotlines called for in other fishing agreements with cable operators, and would be available at no cost to your clients. We can provide in writing any information you need on this facility.

5. It appears we agree on this point.

6. MBARI believes that its proposal on this point is fair and reasonable under the circumstances, in that its obligation to compensate is tied to actual reasonable costs of gear and catch, provided that the injured party takes reasonable steps to notify of the loss. Moreover, MBARI's proposal provides swift compensation, which is an express point of concern to your clients. Given the very low probability of injury and the very small number of affected fishermen, the simple system for compensation is reasonable under the circumstances. If you have proposals for a simplified and streamlined system other than what MBARI proposed, which do not involve committee meetings and payment for adjudication or determination of loss, MBARI would be pleased to consider those proposals.

7. We appear to have no significant issues here.

James P. Walsh, Esq.
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8. We believe a simplified method of dispute resolution is called for under the circumstances. If you have a specific proposal other than what MBARI has proposed, MBARI would be pleased to consider such proposal.

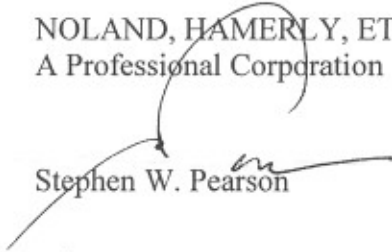
9. We will be pleased to discuss this suggestion further with you; it does not appear to be a major point of contention. Generally speaking, and in our experience, an attorneys' fee provision would mitigate the taking of unreasonable positions by either party. While attorneys' fee provisions are often excluded from agreements by target defendants, there appears to be no good reason to exclude them here; if you can suggest why it is a good idea not to include a fee provision, MBARI would be pleased to consider your suggestions.

Finally, your clients' continuing contention that the MARS project is being pursued as part of an "anti-fishing agenda", or that MBARI is in any way connected the Aquarium's activities is simply incorrect. Our client views these contentions as nothing more than a delaying tactic and as a way to divert the discussion from the real issues. We suggest that the parties' interests will be better served if we all can focus on constructive ways to resolve matters between our clients, to bring about a prompt and mutually acceptable agreement between the parties.

Please let me know when you and your clients are available to meet to continue the discussions of the various remaining issues between our clients. It will be important that the meeting be scheduled as soon as possible, keeping in mind that the agencies are requesting updates not later than June 28. I look forward to hearing from you at your early convenience.

Very truly yours,

NOLAND, HAMERLY, ETIENNE & HOSS
A Professional Corporation


Stephen W. Pearson

SWP:ccs

cc: Deirdre Hall, Permit Coordinator
Monterey Bay National Marine Sanctuary
Michelle Brown, California State Lands Commission
Alison Dettmer and Audrey McCombs, California Coastal Commission
Monica DeAngelis, Marine Mammal Biologist,
NOAA National Marine Fisheries Service/Southwest Region
Monterey Bay Aquarium Research Institute