



MONTEREY COMMERCIAL PROPERTY OWNERS ASSOCIATION



July 11, 2016

Felicia Marcus, Chair
Tom Howard, Executive Director
State Water Resources Control Board
1001 I Street
Sacramento CA 95814

Matthew Quint
Division of Water Rights
State Water Resources Control Board
PO Box 2000
Sacramento, CA 95812

Transmitted by email to matthew.quint@waterboards.ca.gov

Re: Preliminary Staff Recommendations to Modify Cease and Desist Order WR 2009-0060

Dear Ms. Marcus, Mr. Howard and Mr. Quint:

The Monterey Commercial Property Owners Association (MCPOA) has been involved with water issues on the Monterey Peninsula for several years. The MCPOA position with regard to the Preliminary Staff Recommendation to modify Cease and Desist Order WR 2009-0060 is the purpose of this letter.

We strongly believe that the Effective Diversion Limit should be set at the 8,310 acre-feet levels outlined in the joint letter from CalAm, Monterey Peninsula Regional Water Authority, Monterey Water Management District, City of Pacific Grove and the Pebble Beach Company dated June 29, 2016. The higher limit recognizes the negotiations that occurred between the State Water Staff and various stakeholders. We further believe that the staff concept of using averages misuses the concept. An average by its very nature includes amounts both higher and lower that makes up an average and is influenced by events and circumstances that an average

does not recognize. Averages should not be used as an enforcement mechanism because they are not appropriate for a number of short term annual measurements.

The community has fully committed itself to developing the water supplies necessary to limit its diversions from the Carmel River to the amount legally allowed. However, despite its efforts it remains hostage to processes that it does not control. This includes the delays in the processing of the EIR by the CPUC, the requirement and resulting studies to do subsurface intake by the California Coastal Commission and most recently, litigation by community activists that do not share the same urgency to resolve the diversions. Ultimately, many of the milestones are not within the control of the community and consideration should be given to this fact.

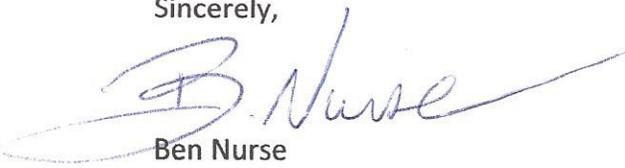
MCPOA has significant concerns with the language added in paragraph 3 of the draft order. The provision limiting water use to the lesser of a 5-year average or the Monterey Peninsula Water Management District's allocation will produce a result that is arbitrary and discriminates against only a certain class of property owners. It creates a circumstance under which the same property can use its allocated water for its existing use but a different legal use is arbitrarily limited to a lesser water right. This language essentially penalizes properties that have not fully used their historical allocation right after one of the most significant economic downturns.

This provision to be applied now is patently unfair to anyone who has purchased property and/or has committed to significant projects. These owners have reasonably relied upon MPWMD's determination of the property's allocation to establish the values to pay for their property or begin the process for significant projects. To now disregard those allocations and apply an unknown lesser right will significantly impair the value of the property. It seeks to retroactively apply a standard for which no one was given any notice of potential restriction of their rights.

The order seeks to impose a condition and duty on CalAm which is not CalAm's to enforce. In situations where there is an existing meter, CalAm has a duty to serve and does not have the right to make land use decisions which are properly the right of local land use agencies.

As a solution we strongly suggest that the provisions related to change in zoning or use should be deleted and land use decisions should be left to local government to make responsible decisions for the community while recognizing the overall limits imposed under the order.

Sincerely,



Ben Nurse
President