



July 12, 2016

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

Mr. Matthew Quint  
Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000  
Sacramento, California 95812-2000

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

On June 17, SWRCB staff released a Preliminary Staff Recommendation for modifications to Cease and Desist Order WR 2009-0060 (CDO) issued to California-American Water Company (Cal-Am). Unfortunately, the Preliminary Staff Recommendation would upset the rules that the Monterey Peninsula community has developed through long and involved discussions to reconcile the need to reduce Cal-Am's Carmel River diversions and the community's economic health.

In particular, paragraph three could preclude the opening of the Center for Ocean Education and Leadership, which the Aquarium plans as a major step to advance its mission of reaching schoolchildren, youth leaders, and science educators about ocean and coastal conservation. As an organization dedicated to the conservation of the ocean, its connected waterways, and the lives of plants and animals that depend on healthy sustainable environments for their existence, the Aquarium has always supported the SWRCB's efforts to restore the ecological balance of the Carmel River. This effort can only succeed, however, if the SWRCB focuses its efforts on limiting the diversions themselves while allowing the community to allocate the resulting water supply consistent with the community's goals.

Paragraph three of the Preliminary Staff Recommendation is not consistent with this approach and would hinder projects like the Aquarium's education center. The Aquarium respectfully requests that paragraph three be modified so that land use changes can occur under the CDO as long as they do not result in water demands exceeding the Monterey Peninsula Water



Management District's (MPWMD) allocation for the relevant property and the overall Effective Diversion Limit.

*The Aquarium's Interest in the CDO*

The Aquarium fully supports the SWRCB's overarching goal of reducing Cal-Am's Carmel River diversions and ensuring that they are consistent with maintaining a healthy riparian environment for steelhead. Our support for this goal is only one element of the Aquarium's work in support of the SWRCB. As noted by Aquarium Executive Director Julie Packard in her letter of July 6, one of our most-critical long-term initiatives has been to build the next generation of science-literate environmental leaders for our state. Over the past three decades, more than 2.3 million students and tens of thousands of teachers have gained skills and knowledge through our science-based ocean and watershed education programs. These programs are discussed in more detail in an attachment to this letter.

In cooperation with like-minded organizations and the National Oceanic and Atmospheric Administration, the Aquarium is also embarking on a program for tagging Carmel River steelhead to advance scientific understanding of the oceanic phase of their life cycle – about which nothing is currently known – to inform better management and more effective restoration efforts.

Consistent with these activities, the Aquarium has long been interested in the CDO and the Monterey Peninsula community's efforts to comply with it. However, the June 17 release of the Preliminary Staff Recommendation for the CDO gave us cause for alarm because of the effect that paragraph three would have on locally-important projects that have been developing for years within the constraints of the CDO and the MPWMD's water allocations. This includes the Aquarium's Center for Ocean Education and Leadership. This follow-up to Ms. Packard's letter now explains, in detail, possible unintended consequences should the SWRCB accept, without modification, the language as proposed in paragraph three.

*The Effect of the Proposed CDO Modification on the Aquarium's Education Center Project*

As a result of our success in serving education groups – and our mission-driven goal to have a deeper impact in ways that promote greater stewardship of ocean and aquatic resources – the Aquarium requires more space for school, youth and teacher programs. The Aquarium purchased a building on Monterey's Cannery Row in 2014 for these new facilities. The building was originally constructed in 1929 to support fish processing and canning operations across the street, and then sat vacant once the sardine fishing industry collapsed. After being renovated in the early 1970s, it hosted a number of different businesses, most recently several restaurants, a



culinary school, retail outlets, and, for nearly 30 years, a nightclub. After the severe global economic downturn in 2008, the building once again lost vibrancy and tenancy.

The Aquarium has worked for the past two years to win approval to remove the tired old building and replace it with a new, water- and energy-efficient, LEED-certified, cultural institution to house our Education Programs staff and our Center for Ocean Education and Leadership. The sole purpose for developing this property is to continue the Aquarium's work developing competent stewards of our oceans and waterways. The education center has received all necessary land use approvals from the City of Monterey, including a use permit that confirmed it is consistent with existing zoning. A series of images showing the use of the property over time and the proposed new use is also attached.

We are on target to begin construction of the education center this fall, and to welcome the first students to the new building in early 2019. We are about to hire staff who will begin the multi-year process of developing curriculum for the expanded suite of programs we'll offer when the education center is complete.

It is at best uncertain, however, how paragraph three in the SWRCB's Preliminary Staff Recommendation would apply to the education center. As approved, the project would use less water than the pre-2008 occupants of the property, and its water demand would be within the MPWMD's established allocation to the property. However, due to the effects of the severe economic downturn that began in 2008, the education center requires more water than has been used on the property during the averaging period proposed in the Preliminary Staff Recommendation.

While the education center does not require a change in zoning, we cannot determine whether the SWRCB would consider the new educational activities to be a change in use. The Preliminary Staff Recommendation's use of water year 2008-2009 as the start of the averaging period would have a particularly harsh impact on the site because the nightclub housed in the building for more than 30 years closed before that water year commenced. Consequently, the 2008/2009 to 2012/2013 time period represents unusually depressed water use when compared with the building's water use over the previous three decades.

The Preliminary Staff Recommendation, if strictly applied, would create unusual and presumably unintended perverse incentives. The Aquarium could refurbish the old building and lease the building to restaurants, fast-food outlets, and/or to nightclub proprietors – now that the economy has improved – without securing any change in zoning or use. The water use associated with such redevelopment would be significant, but neither the Aquarium's



educational mission nor the SWRCB's water management mission would be served. Yet such a restoration of the past uses of the site would be perfectly consistent with any interpretation of the Preliminary Staff Recommendation's paragraph three.

We believe this is not the result that the SWRCB intends or would like to see occur as a result of its modification of the CDO.

*Proposed Edits to the Preliminary Staff Recommendation's Paragraph Three*

Reducing water diversion from the Carmel River is a major purpose of the CDO. To that end, the Aquarium, along with the community around us, supports a moratorium on new water connections. The Aquarium and the community agree there should not be any water use that would increase diversion levels above what has been authorized, and we applaud the creativity and collaborative effort that have led to significant reduction in diversions from the Carmel River over the past seven years, to the point that current diversion levels are much lower than when the CDO was first issued in 2009.

In order to implement these reductions, the community, including a myriad of diverse interests, worked long and hard with the MPWMD to develop an equitable allocation system for available water. The community and the Aquarium have relied on the result of the local governmental process to make decisions about buying and selling property, planning land use projects and investing significant financial resources.

The Aquarium respectfully requests that the SWRCB edit paragraph three in the Preliminary Staff Recommendation to be consistent with the MPWMD's allocations. Specifically, the Aquarium asks that the SWRCB edit paragraph three as follows:

For the purposes of interpreting State Water Board Order WR 2009-0060, ordering paragraph 2, a change **is a change in a property's land use that requires a change** in zoning **approved or use is a change made** by a local government agency **and that will result in the property's water use exceeding of** the Monterey Peninsula Water Management District's **allocation for the property (MPWMD). For determining an increase in use of water, for past water use, Cal-Am shall use the lesser of the actual average of annual metered water use for the five year period from WY 2008-2009 to WY 2012-2013, or the amount calculated using MPWMD's fixture-unit-county method.**

The Aquarium understands that the changes we suggest reflect a somewhat different approach than is expressed in 2012 and 2013 letters issued by the SWRCB's staff to Cal-Am and MPWMD.



The Aquarium, however, understands that the SWRCB has not previously incorporated those letters' terms into any legal order. It was the MPWMD's local governmental rules that the community developed, and on which the community and the Aquarium have relied, in making crucial planning and investment decisions. Upsetting the investment-backed expectations supported by the MPWMD's rules would impose an "if you didn't use it, then you lost it" rule on the community and be a taking of important property rights on the Monterey Peninsula.

The community has worked carefully to achieve the SWRCB's laudable goal of reducing Carmel River diversions so that steelhead can recover and the river ecosystem return to health. Those diversions have decreased significantly since 2009 with the community operating under the MPWMD's allocation system. It would be unfortunate to lose the momentum toward a long-term solution that would result from continued debate.

*Conclusion*

We truly appreciate the SWRCB's efforts to protect and improve our statewide resources, and look forward to continued progress on long-term water solutions that will reinforce California's leadership as it demonstrates that a healthy economy and healthy natural systems can thrive together. We urge you to move forward on the current path of ecosystem restoration and protection without diversion into granular land use planning, and edit the Preliminary Staff Recommendation's paragraph three as we propose.

If you need more information from us, please contact Barbara Meister, our Public Affairs Director, at (831) 648-4978 or [bmeister@mbayaq.org](mailto:bmeister@mbayaq.org). If you have any legal questions, please do not hesitate to contact our legal counsel for water issues, Paul Bartkiewicz or Ryan Bezerra, at (916) 446-4254 or, respectively, [pmb@bkslawfirm.com](mailto:pmb@bkslawfirm.com) or [rsb@bkslawfirm.com](mailto:rsb@bkslawfirm.com).

Sincerely,

A handwritten signature in blue ink that reads "Cynthia L. Vernon".

Cynthia L. Vernon  
Chief Operating Officer

Encl.

Cc: Ryan Bezerra  
Paul Bartkiewicz



Cannery Fire—October 1953



New Building view from Coastal Trail



Existing Condition—July 2016



Proposed New Building—July 2016



Historic Approved Use—nightclub

**625 Cannery Row before re-use**



Proposed New Use—Education Center

**625 Cannery Row after re-use**





July 12, 2016 – Attachment B

## Ocean and Coastal Education Programs

As a conservation education institution, the Aquarium has had a strong commitment to K-12 education, beginning with our board's commitment to free admission for school groups and teachers in 1985. We believe it's imperative that young people get a strong start in science, understand the importance of the ocean to our lives and get the experience and mentoring to be leaders.

With a burgeoning state population, a teacher shortage, and dozens of languages spoken in California's classrooms, our programs and services are in high demand. The proposed Center for Ocean Education and Leadership will house programs that will benefit the ocean and California watersheds for generations to come. It will allow us to provide every visiting school group with a staff-led program, double the number of science teachers in our professional development workshops, and double the number of teens in youth leadership programs.

### Programs for Visiting School Groups

Each year nearly **80,000 students from throughout California visit the Aquarium** as part of a school field trip. Currently, fewer than half are able to participate in a staff-facilitated program in which our staff teaches them how the watershed connects their inland communities with the ocean—and how their actions at home, even if they live in the Central Valley, can make a difference. The new Center for Ocean Education and Leadership will allow us to reach all of these visiting students with a staff-led learning experience.

### Middle and High School Teen Leadership Programs

**WATCH:** Since 2006, Watsonville Area Teens Conserving Habitats (**WATCH**) has graduated **355 students from three high schools in Pajaro Valley Unified School District** (96% Hispanic; 85.5% free and reduced-priced meals). During the year-long program, students conduct an in-depth watershed study in the Pajaro River basin, working with local scientists and environmentalists to conduct field-based research at Elkhorn Slough and Younger Lagoon, sharing their research findings with friends, families and the public.

**Young Women in Science (summer) and Student Oceanography Club (afterschool):** Since 2006, **929 middle school girls have participated in Young Women in Science (YWS)**, a week-long, bilingual summer program. Another **514 middle school teens** have participated in **Student Oceanography Club (SOC)**. Student projects include native plant restoration, coastal clean-ups, habitat restoration, storm-drain stenciling, water quality monitoring and marine debris analysis. They learn about the impact of land-based pollutants on the health of sea otters and the impacts that climate change is having on the ocean and coastal habitats.

**Teen Conservation Leaders:** Each summer **50 high school students join 60 returning Teen Conservation Leaders (TCL)** for an intensive two-week training. Together, they provide more than 10,000 hours of volunteer service interacting with Aquarium visitors, sharing hopeful stories about conservation and exploring how their personal lives connect with the ocean.

## Teacher Professional Development

Over the past decade, **9,676 teachers representing more than 2,000 schools in California have participated in our year-long institutes and workshops. They, in turn, have reached more than 570,000 students** in their classrooms, half of them from Title 1 schools, with high numbers of children from low-income families. Our institutes enable teachers to create units of study that emphasize the land-sea connection and watershed ecosystems. Teachers explore issues related to agricultural and urban runoff, saltwater intrusion, the loss of native plants and animals, ecosystem diversity and the impact of the San Clemente Dam removal on the Carmel River.

## Conservation & Science Programs

In addition to educational programming, the **Monterey Bay Aquarium's Conservation & Science** program contributes to the advancement of ocean and coastal watershed protection in the following ways:

**Steelhead and Coho Migrations:** In collaboration with NOAA, we will conduct pioneering tagging studies of federally threatened steelhead trout from the Carmel River and Coho salmon from Scott Creek. This research will document – for the first time – the critical ocean phase of their life cycle and contribute to their long-term conservation management plans.

**Sea Otter Recovery:** For more than 30 years, we have worked to understand how threatened sea otters help restore and maintain healthy coastal ecosystems, especially California's kelp forests and estuaries. Our work with federal and state agencies and university colleagues is ongoing, as we collaborate on sea otter rehabilitation, climate change mitigation, and coastal resiliency initiatives.

**Climate Change:** As coastal communities prepare to address the impacts of global climate change, the Aquarium has championed innovative statewide climate adaptation policies. Our Ocean Policy team is leading regional discussions on climate preparedness and ocean impacts of seawater desalination.

**Plastic Pollution:** Elimination of ocean plastic pollution is a conservation priority for the Aquarium. We are leaders in raising public awareness of the problem and inspiring our audiences to take action. We achieved California legislation that outlawed plastic microbeads in personal care products, and we are advocating to retain California's statewide ban on single-use plastic grocery bags.

**Marine Protected Areas:** The Aquarium championed creation of California's first-in-the-nation network of marine protected areas (MPAs), and we continue to work to secure resources for monitoring and enforcement of MPAs on the Central Coast. We are also conducting community outreach and education on the benefits of MPAs to marine and coastal ecosystems.

**Kelp and Seaweed Histories:** The Aquarium has played an important role in documenting the marine botany of the California coast, reflected in our extensive herbarium. These algae specimens contain in their tissues a record of the ocean's past, including land-based pollution and ocean pH. Our research is helping unlock these records and reconstruct the history of California's coasts.