

BRC / MJQ  
WR 2009-0060

Jane Haines

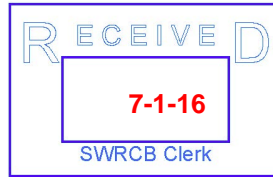
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June 29, 2016

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



Re: SWRCB INJUSTICE - proposed modification of Cal Am Cease and Desist Order (CDO) WR 2009-0060

Dear State Water Resources Control Board,

I protest the *injustice* of financially punishing Monterey Peninsula water users, rather than Cal Am, for Cal Am's failure to comply with the SWRCB 1995 order for a lawful water source. The 1995 SWRCB order was directed to Cal Am, not to Peninsula residents. Yet, as the residents substantially cut back water use, the PUC allows Cal Am to charge higher rates to compensate for reduced sales. Today, Cal Am still has not complied with the SWRCB 1995 order yet has suffered no adverse financial consequence. Instead, the financial penalty for Cal Am's 21 year failure falls solely on Cal Am's customers. Had the 1995 order been structured to financially penalize Cal Am for delay, the Peninsula's water supply would likely have been from lawful sources long ago.

The current situation is grossly unjust. California Civil Code section 3543 states:

***Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.***

Monterey Peninsula water users unjustly suffer financially resulting from Cal Am's failure to comply with the 1995 SWRCB order. Cal Am suffers not. *Justice requires that Cal Am, not its customers, be the sufferer.*

The enclosed June 28, 2016 letter to the SWRCB from Public Water Now proposes a way for the SWRCB to shift the financial penalty for Cal Am's delays from Peninsula water users to Cal Am. Justice requires no less.

I urge your serious attention to the enclosed June 28, 2016 proposal by Public Water Now.

Sincerely,

Jane Haines

copy w/ PWN 6/28/16 proposal enclosed: Bill Monning, Ken Lewis (PUC), David Stoldt (MPWMD), Bill Kampe (Mayors Authority), Rita Dalessio (Sierra Club), George Riley (Public Water Now).

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**PUBLIC  
WATER  
NOW**

## **PUBLIC WATER NOW**

**P.O. Box 1293, Monterey CA 93942**

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[publicwaternow@gmail.com](mailto:publicwaternow@gmail.com)

State Water Resources Control Board  
Attn: Chair Felecia Marcus, SWRCB Members and Staff  
PO Box 2000  
Sacramento CA 95812-2000

June 28, 2016

**Comment Regarding the Cal Am Cease and Desist Order (CDO) WR 2009-0060, Preliminary Recommendations Document from the State Water Resources Control Board (SWRCB).**

Dear Chair and Members,

Public Water Now (PWN) is an all volunteer group of ratepayer advocates on the Monterey Peninsula. It is a 501(c)4 with 14 people on the Board of Directors, is an intervener in selected CPUC applications, and actively engages on local water issues. The predecessor group was Citizens for Public Water, which began operating in 2005. We have been at this for years.

The SWRCB staff recommendations added a few adjustments to the Cal Am CDO extension request, but essentially the SWRCB supports the request filed by Cal Am and their allied organizations. **PWN hereby registers a strong objection because it is the ratepayer who will bear the brunt of any reduced water resulting from Cal Am falling short on prescribed milestones.** The penalty falls on ratepayers, not Cal Am that is the targeted guilty party in the CDO to comply. This is blatantly unfair to ratepayers, and certainly forgives Cal Am for any culpability. Is this what SWB originally intended? Is it what SWB intends now?

As far back in 1995, Cal Am was accused of being in violation of legal water rights pumping from the Carmel River, and was told to prepare a new replacement supply system. In 2009, Cal Am was reprimanded for unreasonable delays, and was ordered to take specific actions to generate a water supply project, and threatened with penalties for non-compliance.

We remind the SWRCB that Cal Am has failed on three occasions to generate a new water supply, and has sent the ratepayers the bill, which totals about \$35 million. Ratepayers have already paid for Cal Am misfeasance, and will pay for Cal Am nonfeasance in the future. We remind you of these costs on ratepayers because we have seen how Cal Am has not been penalized in any way for its past failures, and we continue to pay for these stranded costs. Cal Am (American Water Works) shareholders have paid nothing. Now with the proposed modifications, Cal Am again will pay nothing.

Our primary objection is the cost and hardship exposure to the ratepayers that can be expected from Cal Am failures to meet milestones. The CDO, and your Board's demands for a timeline and deadline, and your threats for penalties, are being tossed aside by the proposed modification that protects Cal Am. We question if the SWRCB means what it says. Cal Am was warned, and then ordered, but still it has diddled away 20 years. Cal Am is the non-performer here, and should bear the brunt of any penalties for missed milestone.

It appears that SWRCB is willing to negotiate a compromise, rather than back up its CDO threat for penalties for non-compliance. For an agency with power, you seem far too willing to let the guilty escape. You seem far

too willing to protect the non-performing entity -- Cal Am -- and far too willing to place a further penalty on the innocent -- ratepayers.

Under Cal Am's proposed modification, when milestones are missed, Cal Am will be required to reduce the amount of water delivered to ratepayers by 1000 acre feet for each missed milestone. One problem with this approach is that a substantial amount of the penalty will fall on the hospitality business sector, the major economic driver on the Monterey Peninsula.

The Cal Am 2014 financial report indicates that the commercial customers consumed 24% of the water delivered on the Monterey Peninsula. It is estimated that there are an average of about 19,000 overnight visitors on the Monterey Peninsula, (see chart on last page). The aquarium alone attracts 1.8 million visitors annually averaging approximately 5,000 per day. The 2016 Pebble Beach Pro Am golf tournament attendance was almost 150,000; an estimated 100,000 where non-resident visitors. The water used by Monterey Peninsula visitors will probably not decrease, so the 1,000 acre foot reduction will all fall on residential ratepayers. Consequently the resident ratepayers will be required to reduce more than their fair share of the total water normally used.

This reduction in water availability, this rationing, penalizes the ratepayers of the Monterey Peninsula, especially the residential ratepayers, for Cal Am taking water illegally for 20 years! These 1000 acre foot water cuts do not penalize or incentivize Cal Am because their annual income and profit margins are predetermined and set by the California Public Utilities Commission (CPUC). Nor does it penalize the local hospitality industry because it has a flat rate structure approved by the CPUC that does not incentivize conservation. It incentivizes 'best management practices' but not conservation.

Whenever Cal Am experiences a reduction in income as a result of the reduced water consumption, it submits a request to the CPUC for an increase adjustment to their income. As an example in 2016 Cal Am submitted a request to the CPUC to recover \$50 million due to ratepayers cutting water use over five years and satisfying the state drought mandated water use reductions.

Also, your staff recommendation to reduce the authorized take from 8310 to 7990ac further increases the exposure on residential ratepayers to increased costs, since Cal Am can recover revenue lost from under-pumping.

There needs to be a way for SWRCB to live up to its threat to Cal Am. Imposing a potential penalty on ratepayers falls flat. In an effort to be supportive and relevant to the SWRCB threat, there needs to be a penalty threat to Cal Am. This can only occur if there is a penalty, and only if it is applied to Cal Am, not its ratepayers. In an effort to be helpful, PWN hopes you will consider the following penalty format, and apply it to Cal Am.

Cal Am has taken thousands of acre feet of water from the Carmel River it had no rights to every year for more than 20 years, paid nothing for it, and sold it to ratepayers at a very substantial profit. Cal Am was given 20 years to provide a new source of water for the Monterey Peninsula by the SWRCB. Cal Am has started and failed to develop a new water source on at least three occasions over the past 20 years. Ratepayers are already paying \$35 million for Cal Am failures, but have never received one drop from a new Cal Am water source.

It is proposed that rather than cutting water to the ratepayers, Cal Am should be required to reduce the cost of water to the ratepayers. With this approach Cal Am is penalized for their failures, not the ratepayers. An example of the proposed water price reductions are displayed in the matrix below. It is an attempt to apply an

accelerated tier structure to failures, very similar to the increasing tiered rates Cal Am applies to residential customers using excess water.

Cal Am Milestones	First Miss	Second Miss	Third Miss
Customer water price reduction	0.2 Cent/gal	0.4 Cent/gal	0.8 Cent/Gal
1000 AF =325,851,000 gal.	\$651,706.00	\$1,303,412.00	\$2,606,824.00

If it is determined by the SWRCB that Cal Am has missed the first milestone, Cal Am will reduce water cost to ratepayers by 0.2 cents per gallon until the milestone is achieved. If the first milestone is incomplete on the date the second milestone is also missed, the sum of the first and second milestones reductions, or 0.6 cents (0.2 + 0.4 cents) will be provided the ratepayers. If the first milestone is completed at the time the second milestone is missed the water price reduction would be the second milestone 0.4 cent per gallon amount until that milestone is achieved. In the event the third milestone is missed while the either the first and/or the second milestone are incomplete the sum of the missed milestones will be in effect up to a maximum of 1.4 cents per gallon (0.2 + 0.4 + 0.8) until individual milestones are completed and reduced as each milestone is completed to the satisfaction of the SWRCB.

**Because these proposed reductions in income are penalties for Cal Am missing MPWSP milestones, they should not be recoverable in any way from the ratepayers!**

Should a competing desalination facility or alternative new water source become available and is capable of delivering the required quantity of water to the Monterey Peninsula, the SWRCB would have the option of canceling the CDO and/or discontinuing the proposed ratepayer water price reductions.

Respectfully submitted,

George T. Riley

Charles S. Cech

/s/ George T. Riley

/s/ Charles S. Cech

Public Water Now, 1198 Castro Road, Monterey CA 93940

Public Water Now, PO Box 1293, Monterey, CA 93942

Attached: A. Monterey Peninsula Hospitality Industry data  
B. CC list

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Attachment A. Monterey Peninsula Hospitality Industry data

**Rough Estimate of Monterey Peninsula Hospitality Sector Annual Water Consumption**



### Average Total Daily Guest Census

No. of rental rooms on the Monterey Peninsula	12004_Source: <a href="http://www.seemonterey.com">www.seemonterey.com</a>
Average annual national occupancy rate	63%Per National Occupancy Average
Peninsula Rooms rented per national average	7562.52Rented Room Calculation
Estimated average number of occupants per room	2.5Estimated Avg. No. of Occupants
Total number of rental occupants per day	18906.3Average Overnight Guests
<b>(The Monterey Aquarium averages 4950 guests per day)</b>	

### Estimate Occupant Water Usage

10 minute shower per occupant per day	25.0gallons per occupant - Estimate
Four uses of 1.2 gallon per toilet per day	4.8gallons per occupant - Estimate
Bedding Washing Gallons per occupant per day	2.6gallons per occupant - Guess
Dish Washing Gallons per occupant per day	2.6gallons per occupant - Guess
miscellaneous/ice/drinks/meals/foilage watering	3.0gallons per occupant - Guess
Total Consumption/occupant/day	38.0gallons per occupant per day
<hr/>	
Total guest water consumption per day 18,906.3 X 38	718,439gallons per day
Estimated annual guest Consumption	262,230,381gallons per year
Non-resident employees water consumption	18,000,000Gallons per year
Total non-resident and occupant usage	280,230,381Gallons per year
Estimated acre feet of water consumed	859.99Acre Feet

Cal Am reported commercial water use in 2014 was 2601 Acre Feet.

The 859.99 Acre Feet estimate for hotel visitors only, is very conservative.

This rough estimate does not include thousands of tourists passing through flushing toilets daily.

There are 22,000 fulltime hospitality employees. An estimated 80% are not Peninsula residents using water daily.

Nonresident hospitality employees could add up to an additional 100 acre feet of water consumed per year.

A brief list of Monterey Peninsula major events that attract many thousands of visitors annually:

- Pebble Beach Pro Am
- Pebble Beach Concourse d'Elegance
- Pebble Beach Food and Wine festival
- Pebble Beach TaylorMade golf tournament
- Pebble Beach 1<sup>st</sup> Tee Open juniors golf tournament
- Big Sur Marathon
- Big Sur Half Marathon
- Carmel Bach Festival
- Carmel International Film Festival
- Laguna Seca automobile and motorcycle races
- Sea Otter Classic bicycle competition
- Monterey Jazz, Blues and other festivals

Attachment B. CC list: PWN Comment Letter of 6/28/16 to SWRCB

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