



July 7, 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
P.O. Box 2000
Sacramento, CA 95812-2000

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

The Cannery Row Company has been involved with the water issues on the Monterey Peninsula for many years and takes this opportunity to provide comment on issues raised in the Preliminary Staff Recommendation to Modify Cease and Desist Order WR 2009-0060. We will comment on both the Effective Diversion Limit and the Change in Zoning or Use below.

Effective Diversion Limit

We strongly believe that the Effective Diversion Limit should be set at the 8,310 af level as outlined in the joint letter from Cal Am, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, City of Pacific Grove and Pebble Beach Company dated June 29, 2016. This higher limit recognizes the negotiations that occurred between the State Water Board staff and various stakeholders. We further believe that the staff concept of using averages misuses the concept. An average by its nature includes amounts both higher and lower that make up the average and is influenced by events and circumstances that an average does not recognize. Averages, in a circumstance such as this, are not appropriate for a number of short term annual measurements. Averages should not be used as an enforcement mechanism.

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.

Change in Zoning or Use

We have 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.

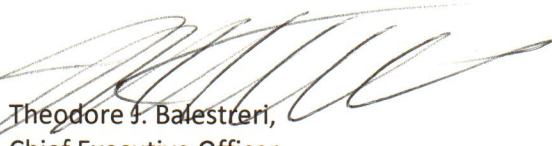
This provision to be applied now is patently unfair to anyone who has purchased property and/or has committed to significant projects. These owners have reasonably relied upon the MPWMD's determination of the property's allocation to establish the values to pay for their property or begin the process 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 a potential restriction (taking) of their rights.

The order seeks to impose a condition and duty on Cal Am which is not Cal Am's to enforce. In situations where there is an existing meter Cal Am 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.

The provision 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 this order.

In closing, we ask that the State Water Resources Control Board extend the CDO with the modifications that have been requested.

Sincerely,



Theodore J. Balestreri,
Chief Executive Officer