

September 28, 2009

By U.S. Mail and Email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
Post Office Box 100  
Sacramento, California: 95812-0100

Re: Comment Letter - 10/20/09, Board Meeting: CAL-AM CDO

Dear Ms. Townsend:

The Cannery Row Company and its related entities are the owners of a substantial number of developed and operating commercial properties on the Monterey Peninsula within the service area of California American Water Company. At all times, we have operated our properties in conformity with and in reliance upon the rules and regulations of the Public Utilities Commission of the State of California, the Monterey Peninsula Water Management District and the California American Water Company. We are shocked by your draft Cease and Desist Order WR2009-00XX (the "Draft CDO"), dated as of September 16, 2009.

Over the years, we have been granted certain water allowances and certain water credits to our properties in accordance with applicable rules and regulations, upon which we have justifiably relied. Substantial amounts of time, energy and money have been expended by us in obtaining said water allowances and water credits and in connection with planning for their use in environmentally sound and aesthetically appealing projects that will be beneficial to the communities in which they are situated and to the multitude of tourists who visit the Monterey Peninsula each year.

Paragraph 2. of the Draft CDO could be read to preclude the utilization of our existing water allowances and water credits for the purposes for which they are intended. If this is the intention of the Board, it is our view that such constitutes the "taking" of a valuable property right with all the attendant consequences and remedies. If this is not the intention of the Board, then we submit that paragraph 2. needs to be rewritten to make it clear that existing water allocations and

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water credits are not to be impaired by the Order so that we, and others in a similar position, may proceed with the plans for utilization of these water allowances and water credits.

In aid of the utilization of water credits, we would also urge that provision be made permitting transfer of water credits freely from one parcel to another parcel, title to which is held in the same ownership, so long as the overall water usage is not increased. Such a provision would not only lead to better planning and usage of real property but would also lead to a more efficient use of the available water.

While you have concluded that "Cal-Am is illegally diverting water from the Carmel River," you are proposing to punish the entire citizenry of the Monterey Peninsula for an illegal diversion, over which they had no control. In effect, you are proposing that the citizenry of the Monterey Peninsula be penalized for having been the victim of an illegal act perpetrated by another.

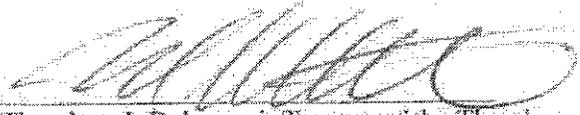
The citizens of the Monterey Peninsula have for all practical purposes been subjected to a moratorium on additional water allocations since 1995. Current water usage on the Monterey Peninsula averages 70 gallons per capita per day, which compares to the 300 gallons per capita per day in Sacramento. The Monterey Peninsula has the lowest usage of any region in California. Further, water has not been available for the asking. Planning and business decisions over the past 14 years have been impacted by the unavailability of water allocations. The effect on the local economy has already been adversely impacted. The effect of the proposed loss of water from the Carmel River combined with the scheduled reductions from the Seaside wells will be devastating to the local economy.

We urge that the proposed Order be reconsidered in the light of these facts. We believe that it would be extremely punitive to impose the proposed immediate water supply reductions on the citizenry of the Monterey Peninsula. We urge that the Board reconsider its position in this matter and work out a more realistic time line in order to enable the community to continue to function in a reasonable manner.

Your consideration of the foregoing will be most appreciated.

Respectfully,

THE CANNERY ROW COMPANY

By: 

Theodore J. Balestreri, Trustee of the Theodore  
J. Balestreri Revocable Trust U/A dtd 2/8/06,  
Managing General Partner