

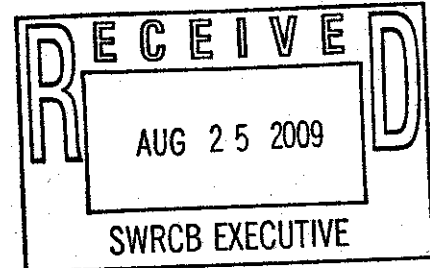


CITY MANAGER
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August 25, 2009

VIA ELECTRONIC MAIL TO:
commentletters@waterboards.ca.gov



Jeanine Townsend
Clerk of the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

RE: Cal-Am CDO Hearing Workshop
Subject: City's Comment Letter

Dear Ms. Townsend:

The City of Seaside opposes the issuance of the Draft Cease and Desist Order ("Draft CDO"). The Draft CDO proposes to implement a moratorium on new or expanded water service within California American Water's ("Cal-Am") service area.¹ If the Board determines to issue the Draft CDO, the City respectfully requests that the State Water Resources Control Board ("Board") modify the Draft CDO to except the 108.059 acre-feet of remaining allocation within Monterey Peninsula Water Management District's ("MPWMD") Water Allocation Program² from the proposed water service moratorium. If adopted as drafted, the proposed moratorium would impose a substantial hardship upon the local community without a commensurate benefit to the Carmel River in-stream habitat. The City asks that the Board consider the following key points in this regard:

- Except for the roughly 108 acre-feet of remaining allocation within the MPWMD Water Allocation Program, a water service moratorium is already in place since no new water service can be initiated within the Cal-Am service area as a result of the MPWMD's water distribution regulations.
- Eliminating the 108 acre-feet of remaining allocation would significantly harm the communities that have planned upon its availability to support essential in-fill development, including projects of great social value, such as senior and affordable housing units.

¹ See Paragraphs 2(a) and (b) of the Draft CDO, p. 58.

² The MPWMD's Water Allocation Program was established by Ordinance No. 52, adopted on December 13, 1990. An allocation of 342.720 acre-feet of water was allocated among the Peninsula communities by MPWMD Ordinance No. 70, adopted on June 21, 1993 following the drilling of the Peralta Well within the Seaside Groundwater Basin. No further allocations have been made since.

- The City would be especially harmed because it possesses roughly half (54.8 acre-feet) of the remaining allocation. Although the City was only granted about 20% of the original allocation, its opportunities for use of its allocation have been restrained by the economic challenges facing the City following the closure of the adjoining Fort Ord Army Base in 1993. Because of the City's restrained use of its allocation, its share of the total remaining allocation has grown, while other jurisdictions used their allocation. As a result, the City would now be disproportionately harmed by the elimination of the remaining 108 acre-feet of allocation.
- The City has relied upon its remaining allocation for its planning goals, and has identified 15 in-fill development projects that it intends to support with this allocation. (See Seaside Exhibit 6.) As presented at the CDO hearing, the City's economist concluded that an inability to proceed with these projects would result in a loss of up to \$2.7 million in the City's future general fund revenue (9% of the City's anticipated 2012 revenue), and a loss of approximately 900 new long-term jobs and 1,620 one-time jobs associated with the construction of these projects. (Seaside Exhibit 7, Decl. of David Zehnder, 3:1-5.)
- Included within the City's planned infill development are projects of significant social value, including up to 150 affordable senior housing units, a County Public Health Clinic, and expansions to the City Library, City Hall, and Police Department.
- The 108 acre-feet of remaining allocation is a comparatively small amount of water. Indeed, it would represent less than one percent of the water served annually within the Cal-Am service area, and less than 3/10 of one percent of the amount of stream flow within the Carmel River at the Highway 1 bridge during the 2008-2009 water year (a below-average precipitation year.)
- Exempting this 108 acre-feet of future use should not adversely impact the Carmel River habitat. (See Direct Testimony of Kevan Urquhart (MPWMD's fisheries biologist), Phase II, p. 6 [explaining that "the draft CDO's first two levels of diversion cuts for CAW are probably not enough to permanently re-water very much habitat, year round in all water year types, and thus may serve no more than a policy/disciplinary benefit for the Board, and not much of an ecological one for the river and its aquatic life, including steelhead and red-legged frogs."])

The City acknowledges the fundamental challenges facing the Steelhead Trout and other habitat requirements within the Carmel River. The City also will continue to do all in its capacity to support and hasten regional efforts to develop alternative water supplies. However, in the interim, the Draft CDO must balance the needs of the river and the community's needs. The Public Trust Doctrine requires as much. (*National Audubon Society v. Superior Court of Alpine County* (1983) 33 Cal.3d 419, 446-447 [the state's duty is to "balance the diverse interests" involved when rendering water resource decisions, and "to preserve, so far as consistent with the public interest, the uses protected by the trust.]")

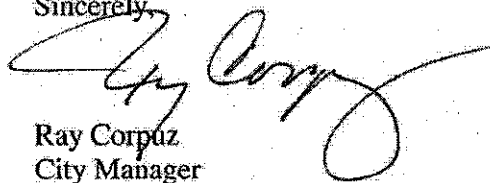
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The Draft CDO's proposed immediate moratorium on all new and expanded water service connections, without regard for the MPWMD's existing program, does not reflect a fair balancing of the diverse public interests involved. The proposed immediate and complete moratorium would substantially harm the community's financial and social welfare for the reasons explained, but would achieve little benefit for the Carmel River's in-stream habitat given the comparatively small amount of allocation remaining. A more equitable and balanced approach would be to provide that no new or expanded water service may be initiated except pursuant to the remaining 108 acre-feet within the MPWMD's Water Allocation Program.

The City also concurs with the comments submitted by the Seaside Basin Watermaster, and joins in the Watermaster's request that the Board modify the Draft CDO with respect to the provisions set forth at page 55 of the Draft CDO concerning development of new supply sources to clarify that these provisions do not prohibit a party from exchanging adjudicated groundwater rights within the Seaside Basin for water service from Cal Am or wheeling water through Cal-Am's system. As explained in Watermaster's comment letter, such common water distribution strategies provide important flexibility and advantages with respect to the prudent management of the Seaside Groundwater Basin.

Thank you for your consideration.

Sincerely,



Ray Corpuz
City Manager

RC:bc

c: Mayor and City Council
Russell M. McGlothlin, Brownstein Hyatt Farber Schreck, LLP