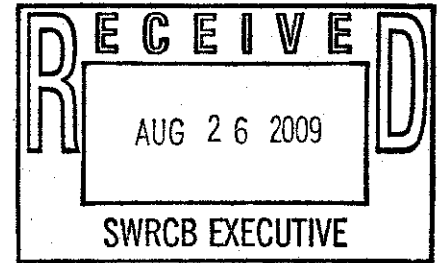




August 26, 2009



Charles Hoppin, Chair
State Water Resources Control Board
Joe Cerna Jr./Cal-EPA Building
1001 I Street, Second Floor
Sacramento, California 95814

Re: July 27th Draft Cease and Desist Order WR 2009-00XX Workshop September 2, 2009

Dear Chair Hoppin and Members, State Water Resources Control Board:

The Monterey County Hospitality Association (MCHA) opposes adoption of the July 27, 2009 draft Cease and Desist Order (CDO) against California American Water Company (CAW).

MCHA is an interested party in the proceedings arising from the draft CDO issued in January 2008 and participated in the proceedings by submitting testimony and exhibits, and by cross-examining witnesses.

Our contention was, and is, the water supply cutbacks proposed in the draft CDO present a dire threat to our industry and therefore a threat to public health and safety because of the grave jeopardy to the local taxes our industry generates (upwards of \$55 million) and the imminent threat to local employment (our industry employs 23,000, mainly within the CAW service area). The hospitality industry is the major economic driver for the Monterey Peninsula. We testified that our industry could survive a 5% reduction in water supply but that any reduction beyond that would necessitate closing lodging rooms or restaurant tables which would ipso facto reduce the local tax revenues we generate, the number of workers we employ, and reduce the competitiveness of our industry, which would make surviving difficult or impossible, and further depress the Peninsula economy, leading to more losses in local tax revenues and jobs.

We testified during the 2008 hearings that occupancy levels in lodging facilities were extremely low; the latest figures from Smith Travel Research indicate that current occupancy is lower still and at near historic lows (for the three months through July 2009, occupancy is down 10% from the already low levels in 2008 per Smith Travel Research). This means water use is down because of the lower level of visitors. Cutting back on water availability at this time will make it virtually impossible for the hospitality industry to recover from the economic downturn; this would have a domino effect on local tax revenues, local employment and the general health of the Peninsula economy.

Our further contention is the draft CDO contains confusing mistakes in arithmetic (differences in amounts listed as average pumping in excess of legal limit on pages 32, 38 and 56; differences in CAW water rights figures on pages 5, 35 and 38; difference in amount subtracted from legal supply number due to siltation on pages 5 and 35 and others) and relies on flawed logic, which we explain below. We leave it to CAW and others to point out the flawed assumptions of achievability or practicality of the incremental annual reductions in the draft CDO.

Punishing CAW or CAW's customers?

Water conservation on the Peninsula has been extraordinary, but the CDO seeks to punish CAW's customers. Evidence was submitted in the CDO hearings about Peninsula water savings accomplished since Water Rights Order 1995-10 (95-10, or WR 95-10) issued. The prosecution submitted testimony that achieving a residential water use level of 75 gallons per person per day would not, according to the California Code of Regulations, jeopardize public health or safety. Evidence was submitted by CAW and the Monterey Peninsula Water Management District (MPWMD) that a) Peninsula use is already at or below that level and b) Peninsula per capita water use is already among the lowest, if not the lowest, in California. Since the Peninsula will have to adjust to the reductions of water supply ordered by the Seaside Basin Watermaster, our per capita use will go lower without additional cutbacks imposed by a CDO. 95-10 instructed CAW to maximize its Seaside Basin pumping to offset the ordered Carmel River pumping reductions; the adjudication of the Seaside Basin with its establishment of pumping restrictions has frustrated that instruction. The draft CDO acknowledges the fact of the adjudication, and the Watermaster-ordered pumping reductions, but does not take the combination of reductions into realistic or proper account in terms of public health and safety or in terms of achievability in the short term. The combined reductions are the "immediate and substantial reduction(s)" the draft CDO says would be an "unacceptable risk" or threat to public health and safety (p. 48).

It would be arbitrary and arbitrarily punitive to penalize the residents and businesses of the Peninsula, who have done an extraordinary job of reducing water use, by imposing additional cutbacks of the magnitude outlined in the draft CDO. If the CDO were to be adopted as written, the reduction in water supply over the next two years would be 1,115 acre feet (AF), the combined total of the immediate reduction in the base from 11,285 acre feet annually (AFA) to 10,978 AFA (307 AF), immediate reduction of 5% of the new base (549 AF), the annual reductions for the next two years (121 AF each year), and the cutbacks ordered by the Seaside Basin Watermaster (417 AF). This is far in excess of the 5% reduction we testified our industry could adjust to and a far quicker reduction than we contemplated when we testified.

Immediate reduction of Carmel River pumping base is arbitrary, leads to complications

WR 95-10 established a Carmel River pumping base of 11,285 AFA after the two cutbacks in that order. The draft CDO would immediately reduce that base to 10,978, or 307 AFA less. Changing the base would complicate the conservation efforts of CAW and MPWMD and entail revisions of conservation rules and rationing plans adopted by both by requiring rewriting of the rules and reeducation of the public in order to achieve any success.

As the CDO correctly notes (p. 48), conservation efforts depend for success on public education and cooperation. As we testified in the hearings, MCHA was the primary private sector organization working with CAW and MPWMD to achieve the level of education and cooperation that resulted in the water savings already achieved. That was not an easy task and it took years of hard work to make area water users that a regulatory reduction in supply is just as real as a reduction in supply resulting from drought. Requiring a revision of the conservation rules to 'save' 307 AFA immediately is arbitrary and not realistic; the amount of work changing rules and reeducating water users is enormous and the water savings, by comparison, are not substantial.

Policy acknowledgement of a new water supply, implications for CDO timetable

During the hearings some evidence was offered about how close the Peninsula might be to realizing a new source of water that could legalize the Peninsula's water supply. SWRCB should at least take policy notice of how the possibility of a new supply has come closer and even more realistic.

Three responsible agencies (Marina Coast Water District, Monterey County Water Resources Agency, and Monterey Regional Water Pollution Control Agency) have signed agreements to cooperate in planning new water projects. The California Public Utilities Commission recently adjusted its schedule for finalizing the Environmental Impact Report of CAW's Coastal Water Project and the identified and studied alternatives to January 2010; a finalized and adopted EIR will provide the basis for the three agencies to begin the process of developing water supply projects, particularly a desalination plant to legalize CAW's water supply.

In light of these facts, it seems capricious for SWRCB to impose drastic pumping reductions immediately and even more gradually knowing that substantive water replacement cannot possibly begin before 2016. If the underlying theory is that immediate drastic reductions combined with the more gradual annual reductions will provide an incentive for the area to embrace a new water supply project, it is a flawed theory. The pumping cutbacks in the draft CDO combined with the Seaside Basin cutbacks will only engender anger and resentment, and quite likely resistance to necessary cooperation. As we testified during the hearings, we have been involved for the last two decades in every reasonable effort to secure a new water supply and for the last decade in achieving Peninsula water conservation success; we are, as a consequence, quite familiar with public sentiments and attitudes on water issues.

If a CDO must be issued, it should be more realistic

We have outlined why we believe the CDO should not be issued.

If the SWRCB believes a CDO should be issued, we urge that it be more realistic than the draft CDO at issue now. A CDO should:


- Not order a reduction in the Carmel River base pumping;
- Not order immediate drastic reductions in Carmel River pumping that, when combined with Seaside Basin reductions, pose an immediate and "unacceptable" threat to public health and safety;

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- Take into account the substantive progress being made on development of a new water supply and calibrate any pumping reductions to a timetable reflecting a realistic estimate of when replacement water should be available; if necessary, a CDO could indicate that its terms would be revisited after 2016;
- Calibrate pumping reductions to an amount of time necessary to develop the public understanding and cooperation necessary to achieve water use reduction success.

Thank you for the opportunity to participate in the proceedings and to make our comments on the draft CDO. We will attend the September 2nd workshop and will be pleased to answer any questions SWRCB might have.

Sincerely



Sarah Cruse, President