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**BEFORE THE STATE WATER  
RESOURCES CONTROL BOARD**

In the Matter of the State Water Resources )  
Control Board (State Water Board) )  
Hearing to Determine whether to Adopt a )  
Draft Cease & Desist Order against )  
California American Water Regarding its )  
Diversion of Water from the Carmel River )  
in Monterey County under Order WR 95-10 )

Hearing Date: July 23 - 25, 2008

Carmel River in Monterey County

**EXHIBIT MPWMD-SP6**

**MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**

**ITEM: CONSENT CALENDAR**

**3. RECEIVE REPORT OF COUNSEL RE STATUS OF RULE 33 (C) -- (FORMER WATER WEST RESERVE)**

**Meeting Date:** July 21, 2003

**Budgeted:** N/A

**Staff Contact:** Stephanie Pintar

**Program/Line Item No.:** N/A

**Cost Estimate:** N/A

**General Counsel Approval:** N/A

**Committee Recommendation:** N/A

**CEQA Compliance:** N/A

**SUMMARY:** Counsel has provided a memo (**Exhibit 3-A**) that reviews the court's order in *Currier & Kaminske v. MPWMD*; Monterey Superior Court No. M 59299.

The Court directed that District Rule 33 (C) be applied in a manner so as not to differentiate between pre-1993 and post-1993 lot owners in the former Water West distribution system service area.

**RECOMMENDATION:** Based on the Court's direction, Counsel recommends that the text of Rule 33 (C) henceforth read and be applied as follows:

"A special reserve shall be established to replenish the Monterey County allocation for new water use which occurs within the boundaries of the former Water West Water Distribution System. Replenishment of Monterey County's allocation from this special reserve shall occur only upon the approval of water use for real property within the Water West boundary (delete these words: which is subdivided after the effective date of this ordinance). The total quantity of water use to replenish Monterey County's allocation pursuant to this paragraph shall not exceed 12.76 acre feet (sales)."

Adoption of the Consent Calendar shall signify the Board's approval of this change consistent with the holding in *Currier & Kaminske v. MPWMD*. If approved, staff will provide, post and publish notice of the change.

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**De LAY & LAREDO**

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EXHIBIT 3-A

Paul R. De Lay  
David C. Laredo

Telephone (831) 646-1502  
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June 24, 2003

TO: Board of Directors, General Manager

FROM: David C. Laredo

RE: *Currier & Kaminske v MPWMD*  
(Monterey County Superior Court No. M 59299)

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This memo reviews the court's order in *Currier & Kaminske v MPWMD* (Monterey County Superior Court No. M 59299). This action was filed on May 17, 2002; a court trial was held on April 30, 2003. Judge Robert O'Farrell issued the court's order on May 28, 2003.

This lawsuit focused on action taken in June, 1993, when the Water Management District enacted Ordinance 70 – creating District Rule 33(C) – to establish a special water reserve of 12.76 acre feet to allocate water for new uses exclusively within the area formerly served by Water West. This area is now served by California-American Water Company. A key provision of Ordinance 70, in the context of this matter, limited the special reserve water allocation so that it was available only to property subdivided after June 21, 1993 (the effective date of Ordinance 70). District Rule 33 (C) states,

A special reserve shall be established to replenish the Monterey County allocation for new water use which occurs within the boundaries of the former Water West Water Distribution System. Replenishment of Monterey County's allocation from this special reserve shall occur only upon the approval of water use for real property within the Water West boundary which is subdivided after the effective date of this ordinance. The total quantity of water use to replenish Monterey County's allocation pursuant to this paragraph shall not exceed 12.76 acre feet (sales).

Plaintiffs Mary Currier, Chris Currier, Roy and Jeanelle Kaminske, and Trustees of the Sumaro Trust sought access to the Water West special reserve even though their property had been subdivided before June 21, 1993 and thus did not appear to meet the qualifying criteria of District Rule 33 (C). They complained that their request for water service was inappropriately denied, and alleged that the denial constituted a "taking" of property in contravention of the U.S. and California Constitutions.

The matter was heard before Judge Robert O'Farrell, who issued an order directing the District to grant necessary permits to Plaintiffs to facilitate Cal-Am water use on their property. The ruling was based upon equal protection principles. The judge determined that an insufficient basis existed to differentiate pre-1993 and post-1993 lot owners.

The Court's ruling appears to provide a basis for others similarly situated (owning property in the former Water West service area) to request access to that increment of water.

Based on this ruling, Counsel advises that the District interpret and apply District Rule 33 (C) in accord with the holding of *Currier & Kaminske v MPWMD* (Monterey County Superior Court No. M 59299), and no longer differentiate pre-1993 and post-1993 lot owner within the former Water West service area. District Rule 33 (C) should be republished, deleting from it the words "which is subdivided after the effective date of this ordinance." The text of Rule 33 (C) would therefore read as follows,

A special reserve shall be established to replenish the Monterey County allocation for new water use which occurs within the boundaries of the former Water West Water Distribution System. Replenishment of Monterey County's allocation from this special reserve shall occur only upon the approval of water use for real property within the Water West boundary ~~which is subdivided after the effective date of this ordinance~~. The total quantity of water use to replenish Monterey County's allocation pursuant to this paragraph shall not exceed 12.76 acre feet (sales).

It is recommended that the published rule reference the holding in *Currier* to document the basis for this modification.

It is recommended that the board review and approve this action on its consent calendar, and if approved, provide notice of the change to the California-American Water Company and owners of record in the former Water West service area.