

September 7, 2016

Ms. Barbara Evoy
Deputy Director, Division of Water Rights
SWRCB
PO Box 2000
Sacramento, CA 95812-2000

Subject: Orders WR 2016-0016 and WR 2009-0060

Dear Ms. Evoy:

I am writing to inform the SWRCB about my concerns regarding recent requests by local agencies and organizations to essentially void Condition 2 of WRO 2009-0060 as it applies to existing service connections. I've submitted comments before expressing my concerns regarding the local (mis)interpretation of Condition 2, which can be found here:

[Coletti Letter #1 - California-American Water Company Request to Change Order WR 2009-0060](#)
[Coletti Letter #2 - California-American Water Company Request to Change Order WR 2009-0060](#)

In their letter dated August 15, 2016 Cal-Am, MPWMD, MPRWA and others are asking that "paper water" within the entire district be used to determine an intensification of water use at existing service addresses, without any review of on-site metered water use from Cal-Am billing records. Specifically, they are asking that Condition 2 be altered to mean:

"An increase in capacity to use water at an existing site in excess of the historical capacity to use water documented by the Monterey Peninsula Water Management District. Documented historical capacity to use water may include capacity to use water from another site or jurisdictional allocation of water so long as the documented capacity from such other source is reduced by a like amount."

An example of undermining Condition 2, by using MPWMD "paper water", is the proposed hotel, Project Bella. MPWMD has committed to "green lighting" the 225 room project by using "on-site credits" (18.53 acre-feet) that came from a site survey performed in 1991. They've also made plans to supplement this amount by using the 9 acre-feet they cynically "appropriated" from the potable water being freed up by the State funded Pacific Grove Local Water Project. I expressed concerns about this appropriation in two separate e-mails (see pp. 3-5, attached). In the audio recording of their December 14, 2015 Legislative Advocacy Committee meeting (link below) they reacted to my Dec 13, 2015 e-mail. Among other things, they characterized the public as being "idiots" for expressing concerns about using this appropriated water for new development ("secret projects"), which includes the Project Bella hotel.

Audio File:

[MPWMD December 14 2015 Legislative Advocacy Committee Agenda Item 5](#)

The Players:

- 1) Dave Stoldt - MPWMD - General Manager
- 2) Dave Potter - MPWMD - Monterey County Board of Supervisors Representative
- 3) Robert S. Brower - MPWMD - Division 5 Representative
- 4) Andrew Clarke - MPWMD - Division 2 Representative
- 5) Heidi Quinn - MPWMD - City of Pacific Grove - Attorney

Meeting Minutes:

<http://www.mpwmd.net/wp-content/uploads/Dec-14-Mtg-Final-Minutes.pdf>

Further, in their letter dated August 15, 2016 the MPWMD seeks to convince the SWRCB that they are dutifully enforcing the CDO, including Condition 2:

“The District has accepted and supports the ban on new service connections (no setting of new meters) required by Condition 2. In fact, following the recent amendment of the Order, the District renewed its commitment to not issue water permits for construction that requires a new meter by enactment of Ordinance 173 on August 15th (see Exhibit A).”

However, once again, the audio recording of MPWMD proceedings tells a different story. In the audio recording of their August 1, 2016 Water Demand Committee meeting (link below) this ordinance (MPWMD Ord. 173) is exposed as being nothing more than a ruse to “grease the skids” and “convince the SWRCB to abandon their interpretation of Condition 2”.

Audio File:

[MPWMD August 01 2016 Water Demand Committee Meeting Agenda Item 2](#)

The Players:

- 1) Dave Stoldt - MPWMD - General Manager
- 2) Stephanie Locke - MPWMD - Water Demand Manager
- 3) Jeanne Byrne - MPWMD - Division 4 Representative
- 4) Andrew Clarke - MPWMD - Division 2 Representative
- 5) Dave Laredo - MPWMD - City of Pacific Grove – Attorney

Agenda Report:

<http://www.mpwmd.net/asd/board/committees/waterdemandcommittee/2016/20160801/02/Item-2.htm>

At the July 19, 2016 SWRCB Board Meeting the MPWMD General Manager stated, “Condition 2 of the 2009 CDO, related to changes in zoning or use, isn’t working for existing service connections.” I challenge that interpretation. I believe Condition 2 is an important reason as to why the peninsula has been so successful in reducing our unlawful diversions from the Carmel River. This fundamental fact is completely ignored in both of the Cal-Am and MPWMD comment letters, dated August 15, 2016.

Also, both letters adopt a business as usual attitude, which perfectly illustrates what the signatories can’t seem to grasp about the CDO; unlawful water, to intensify development, is not theirs to be “moved around”. Therefore, I urge you to reject the proposed interpretation made by the signatories to the August 15 letters.

Luke Coletti
Pacific Grove, CA

Subject: Dec 14, 2015 MPWMD Board Meeting, Item19 - CONSIDER FIRST READING OF ORDINANCE NO. 168 -- AMENDING RULE 11, AND ADDING RULE 23.9 TO ESTABLISH A WATER ENTITLEMENT FOR THE CITY OF PACIFIC GROVE

Date: Sun, 13 Dec 2015 16:11:55 -0800

MPWMD Board Members,

At their Nov 17, 2015 meeting the SWRCB implemented a condition to the funding of the Pacific Grove Local Water project (see initial draft - attached PDF) that affirms Section 19.2 of the Cal-Am Cease and Desist Order (WRO 2009-0060). Section 19.2 of the CDO states the following:

19.2: Any Monterey Peninsula Community that Wishes to Develop Water from a New Source for Growth Must First Apply Water from the New Source to Reduce its Share of the Water Being Illegally Diverted by Cal-Am; Only after its Share of Illegal Diversions from the River is Ended may Water from the New Source be Used for Growth.

The SWRCB unanimously and enthusiastically implemented this condition (affirming Section 19.2) as it relates to the PGLWP and you can view this portion of the Nov 17 SWRCB meeting here (link below):

<https://www.youtube.com/watch?v=m5Eg4DJaiYs>

However, it appears that MPWMD staff doesn't believe this condition applies to the district. Instead, as part of item 19 on your Dec 14 agenda (link below) you are being asked to "thumb your nose" at the SWRCB and grant the MPWMD an entitlement of 9 afy that can be allocated/used without complying with SWRCB desires, detailed in this funding condition.

<http://www.mpwmd.net/asd/board/boardpacket/2015/20151214/19/Item19.htm>

At this point I'd ask you to consider the possible consequences of not not acting in good-faith with this SWRCB funding condition:

- 1) Your own \$113M low-interest loan with the SWRCB for GWR could be jeopardized.
- 2) The recent proposal for an extension to the Cal-Am CDO could be jeopardized.

If you believe 9 afy is worth this kind of risk (not to mention being viewed as a bad actor in general) then you might decide it's wise to defy the SWRCB. However, I seriously doubt it would be. Cooperation with the SWRCB seems like a much better approach to solving our regional water problems, which you are responsible for doing.

Thank you for your consideration,

Luke Coletti
Pacific Grove

Subject: Jan 27, 2016 MPWMD Board Meeting, Item13 - CONSIDER SECOND READING AND ADOPTION OF ORDINANCE NO. 168 -- AMENDING RULE 11, AND ADDING RULE 23.9 TO ESTABLISH A WATER ENTITLEMENT FOR THE CITY OF PACIFIC GROVE

Date: Wed, 27 Jan 2016 13:13:36 -0800

MPWMD Board Members,

SWRCB Resolution 2015-0070:

At their Nov 17, 2015 meeting the SWRCB implemented a condition to the funding of the Pacific Grove Local Water project that affirms both Section 19.2 and Condition 2 of the Cal-Am Cease and Desist Order WRO 2009-0060 (see Whereas 12 and Condition 4b in SWRCB Resolution 2015-0070 - attached PDF).

Whereas 12 reads as follows: Section 19.2 of State Water Board Order WR 2009-0060 states that cities on the Monterey Peninsula that receive water from Cal-Am must first apply any new water developed to offsetting diversions from the Carmel River prior to using the water for growth.

Condition 4b reads as follows: The City shall apply recycled water produced by the Project to service of existing uses and shall use the ensuing demand reductions to offset deliveries from Cal-Am until such time as the City receives consent from the State Water Board's Executive Director to apply the Project's recycled water and associated demand reductions to new service connections or to increased use at existing service addresses resulting from a change in zoning or use.

It appears to me that MPWMD staff doesn't believe this condition applies to the District. Also, there is absolutely no mention of 2015-0070 Condition 4b in the proposed text for MPWMD Ordinance 168. Instead, the District appears to be "thumbing their nose" at the SWRCB by omitting Condition 4b from MPWMD Ordinance 168 and also by gifting yourself an entitlement of 9 afy that apparently can be allocated/used without complying with SWRCB desires, detailed in SWRCB Res. 2015-0070. Agenda reports for both the first and second readings of MPWMD Ordinance 168 are provided below:

<http://www.mpwmd.net/asd/board/boardpacket/2015/20151214/19/Item19.htm>

<http://www.mpwmd.net/asd/board/boardpacket/2016/20160127/13/Item-13.htm>

CEQA:

In the Jan 17 agenda report MPWMD staff has added additional instructions that mention the "The District Board action must comply with CEQA". However, the Supplemental EIR for the Pacific Grove Local Water Project (that claims to have examined the environmental impacts of re-using the "saved" potable water freed up by the project) did not in fact analyze any of the impacts of re-using the portion of water that the district is gifting itself. I provide below my SEIR comment (E7) and the City's response (found on SEIR p. 2-35 - link below):

Coletti SEIR Comment E7: "Page S-1 states the SDEIR does not analyze potential environmental effects from the 35 AFY of water retained by

MPWMD as it is not part of the City entitlement. While it is not part of the City entitlement, there are effects on the environment from gifting MPWMD water and those impacts are also a result of the project. The Final EIR must evaluate those cumulative impacts".

City Response: "Comment noted. However, any analysis of the potential impacts from use of the 35 AFY by the MPWMD would be highly speculative and therefore not required under CEQA Section 15145. In addition, use of entitlements by MPWMD would require subsequent analysis for their approval at the time any such use of all or a portion of the 35 AFY was contemplated".

<http://www.cityofpacificgrove.org/sites/default/files/general-documents/local-water-project/final-seir20150909compress.pdf>

Why are the potential environmental effects and impacts of the MPWMD entitlement (re-use) any more speculative than Pacific Grove's entitlement (re-use)? Citing CEQA Section 15145 (link below) seems like an extremely capricious means of dodging the impacts of the MPWMD entitlement. Therefore, I am formally requesting that the board make specific findings regarding how and why it is not necessary to evaluate the potential environmental impacts of the 9 afy entitlement you are gifting yourself.

<http://www.pclfoundation.org/publications/ceqaguidelines/Article-10.html#sec15145>

Finally, let me state that I believe any entitlement post WRO 95-10 and certainly post WRO 2009-0060 is, at best, problematic. I oppose the inclusion of any past use of unlawful water (diverted by Cal-Am) for the purpose of determining a MPWMD "entitlement". Is anyone really "entitled" to profit from something that was taken/used unlawfully? I certainly don't believe so. Also, how will carrying these entitlements into the future provide the much proclaimed conservation benefits (water and energy) that this state funded project was specifically meant to provide? I intend to advocate this position as part of the upcoming Cal-Am CDO extension hearings at the SWRCB, where the question of MPWMD entitlements (especially this one) will surely be discussed.

http://www.waterboards.ca.gov/waterrights/water_issues/projects/california_american_water_company/index.shtml

Please include this e-mail ***and*** the attached PDF into the public record.

Thank you for your consideration,

Luke Coletti
Pacific Grove