

January 17, 2017

State Water Resources Control Board
Division of Water Rights
Attn: John O'Hagan
P.O. Box 2000
Sacramento, CA 95812-2000

Subject: Proposal To Alter Condition 2 of WRO 2009-0060.

Mr. O'Hagan,

The Cal-Am CDO should not be relaxed any further:

The SWRCB provided enormous relief to both Cal-Am and the entire Monterey Peninsula by allowing unlawful diversions to continue from the overdrafted Carmel River for another five years:

“Cal-Am shall diligently implement actions to terminate its unlawful diversions from the Carmel River and shall terminate all unlawful diversions from the river no later than December 31, 2021. This date supersedes the December 31, 2016 date in State Water Board Order WR 2009-0060, ordering paragraph 1.”

The SWRCB provided additional relief by adopting an effective diversion limit (EDL) of 8,310 afa, as opposed to the 7,990 afa amount, that SWRCB staff had originally proposed.

However, even with these extremely generous accommodations some on the Monterey Peninsula wish to see the CDO relaxed even further. In their proposed Condition 2 Language, dated December 30, 2016, the Monterey Peninsula Water Management District (MPWMD) seeks to eliminate any analysis of “wet water” consumption at existing service addresses for determining a baseline of past use. Without an accurate baseline of past use there is no way to accurately determine an increase in use and therefore no way to enforce Condition 2 of [WRO 2009-0060](#).

Condition 2 is a very narrowly focused and appropriate restriction, designed to limit an increase in unlawful diversions from the Carmel River:

“Cal-Am shall not divert water from the Carmel River for new service connections or for any increased use of water at existing service addresses resulting from a change in zoning or use. Cal-Am may supply water from the river for new service connections or for any increased use at existing service addresses resulting from a change in zoning or use after October 20, 2009, provided that any such service had obtained all necessary written approvals required for project construction and connection to Cal-Am’s water system prior to that date.” (pp. 8-9, attached).

MPWMD believes unlawful water should be managed like lawful water:

[1] The MPWMD claims: “a property owner, who underwent a decline in use, should not be unduly restricted from restoring that use”. In the context of an ongoing cease and desist order, the District’s belief that reduced or unrealized consumption should be restored at will and even transferred to another property is truly amazing; no property owner is entitled to unlawful water. With that said, Condition 2 is not an “undue restriction”. Instead, Condition 2 only restricts **an increase** in unlawful water consumption should a **very limited** set of land use changes occur.

[2] The District also claims: “managing the system to the EDL is the appropriate approach, treating similar property owners differentially [sic] is not an appropriate approach”. First, acquiring “similar” land use entitlements does not confer “similar” access to water, especially during a CDO. The District advocates for convenience in place of enforcement. Condition 2 is not meant to be convenient. CA Water Code Section 1825 states: “It is the intent of the Legislature that the state should take vigorous action to enforce the terms and conditions of permits licenses, certifications, and registrations to appropriate water, to enforce state board orders and decisions, and to prevent the unlawful diversion of water.”

In their guidance letter dated April 9, 2012 the SWRCB clarified:

“Condition 2 prohibits any increased water use at an existing service address that results from a change in zoning or use approved by either MPWMD or a local land use authority after October 20, 2009.”

Local zoning changes can be adopted by either a legislative act (ordinance) or directly via the initiative process. However, either way, it is not the property owner, or Cal-Am, that is responsible for adopting these land use changes. Instead, Condition 2 simply puts the MPWMD and local land use authorities on notice that there can be no increase in unlawful water consumption at an existing service address due to a change in zoning or land use.

Further, the MPWMD appears to believe the EDL represents lawful water, it doesn't. Saying they should “manage the system to the EDL” is like saying Cal-Am ratepayers should keep taking as much unlawful water as they can get away with. Also, the current 8,310 afa EDL could easily undergo a drastic reduction should any of the six remaining milestones be missed. As described in WRO 2016-0016, each missed milestone could lead to a 1,000 AF reduction in the EDL. In short, managing the system to the EDL is shortsighted and is certainly a poor justification to void Condition 2.

[3] The District further claims: “there is no such thing as “paper water”, rather only water that was already “in the system” as actual use, savings due to an investment in conservation, or an allotment given to a city for a project already permitted in 1993.” To the contrary, any documented “capacity to use water” which is greater than the lawful supply limit is the very definition of “paper water” (i.e., illegitimate capacity to use water). If we exclude ASR and other lesser rights, Cal-Am has a lawful right to divert 3,376 afa from the Carmel River for system wide distribution. However, Cal-Am diverts, on average (last six years), 7,512 afa. The District's total documented “capacity to use water” is certainly more than 7,512 afa. Therefore, as an absolute minimum, the amount of “paper water” currently in the system is 4,136 AF. In the context of Condition 2, “paper water”, at an existing service address, is defined as:

paper water = (capacity to use water) – (average metered annual water use)

For example, if a commercial site has use factors (“capacity to use water”) totaling 18.53 AF and an average of past “wet water” use totaling 10.00 AF then there would be 8.53 AF of “paper water” (illegitimate capacity to use water) that can not be consumed by or transferred to an existing service address that has undergone a recent change in zoning or land use. Any negative value would mean the site has used more “wet water” than the documented “capacity to use water” and therefore, per Condition 2, only the lesser of the two amounts (the capacity to use water, in this case) may be used.

The MPWMD proposal advocates for a business as usual approach, which perfectly illustrates what the District and their supporters do not appreciate about a cease and desist order; managing unlawful water is not the same as managing lawful water.

3,000 acre-feet of reduced pumping:

The MPWMD mentions: "a variety of programs initiated since the 2009 CDO took effect have reduced pumping from the Carmel River by 3,000 AF". The CDO was adopted on October 20, 2009 but due to litigation brought by the District (MPWMD v. SWRCB; Monterey Sup. Ct, No. M102010, Ex Parte App. Filed Oct. 30, 2009), the CDO did not "take effect" until April 22, 2010. With that said, Cal-Am reduced system diversions from the Carmel River by an impressive 1,611 AF (10,286 AF – 8,675 AF) between WY 2008-09 and WY 2009-10. However, over the last seven years (WY 2009-10 thru WY 2015-16) the average reduction in system diversions has only been 1,163 acre-feet (8,675 AF - 7,512 AF). Further, nearly all of this (1,163 AF) would be wiped away in an instant should only one of the six remaining milestones (1,000 AF EDL reductions) in WRO 2016-0016 be missed. Whether it's 3,000 AF or 1,163 AF, citing reduced pumping is a poor justification to void Condition 2 or boost demand of unlawful water. See Cal-Am Diversions Chart on p. 7, attached.

A tortured definition of an "increased use of water":

In their guidance letter dated April 9, 2012 the SWRCB clarified:

"The State Water Board will determine the baseline for past water use based on the lesser of the actual average metered annual water use for a water year from the last five years of records, or the amount calculated using MPWMD's fixture-unit count method."

However, the MPWMD proposal, dated December 30, 2016, would eliminate any analysis of metered annual water use for determining a baseline of past water use. In addition, it would increase the site's "capacity to use water" (documented amount of residential fixture-units or commercial use factors) by allowing transfers of "paper water" from other sites as well as transfers (debits) from a jurisdiction's allocation:

"Increased use of water at existing service addresses shall mean an increase in the capacity to use water at an existing residential or non-residential site in excess of the pre-project capacity to use water, credit from water saved on a site, and or a debit to a jurisdiction's allocation of water as documented by the Monterey Peninsula Water Management District under its Rules and Regulations."

The proposal elicits all of the same questions as those asked by the SWRCB in their guidance letter dated May 31, 2013:

"Since your letter did not address the approach to quantify baseline, please provide additional information as to how your proposal will assure that new usage will reduce consumption below the baseline, what MPWMD would use as a baseline to evaluate past water use at a given site, and how this will be monitored and enforced."

The proposal also fails to address the requirements (underlined below) found in ordering paragraph 3 of CPUC Decision 11-03-048, dated March 24, 2011 (pp. 10-12, attached):

"California-American Water Company shall confer with Monterey Peninsula Water Management District and then consult with the State Water Resources Control Board to develop or select a workable protocol for determining the past use baseline as well as measuring increase in water use."

Since the CPUC is requiring measurements (i.e., water meter data) to determine an increase in water use then the District can hardly claim it's unreasonable to use water meter data for determining a past use baseline. Without a fair and accurate baseline there simply is no way to accurately determine an increase in use and therefore no way to enforce Condition 2. The MPWMD proposal would make it impossible to enforce Condition 2. Instead, it would end up creating a "black market" for those who can afford to finagle a water transfer.

MPWMD Deed Restrictions Provide Access to Water Use Data:

MPWMD [Rule 23-B-1-e](#) states:

"All Water Permits shall include a Notice and Deed Restriction titled "Provide Public Access to Water Use Data." There shall be no additional charge for this deed restriction."

At this point there are thousands of these deed restrictions which can be used to acquire water meter data for determining a past use baseline. Further, as part of ordering paragraph 3 of CPUC Decision 11-03-048, Cal-Am and the MPWMD should develop a protocol and or modify their current "Non-Disclosure Agreement" that would enable a more effective exchange of water meter data to better inform property owners and enforce Condition 2.

MPWMD Water Transfer study:

A water transfer study (DCI Inc.) received by the District in June 2001 concluded water transfers for commercial use led to a net increase of 18% on the donor and receiving sites. In nearly all cases, the actual savings were less than the anticipated savings (pp. 18-23, attached). The study's analysis of water transfers for residential properties was inconclusive. In March 2002, the District adopted [Ordinance No. 102](#) banning all water transfers. Transfers were eventually restored. The entire study can be found here:

[Analysis of Water Savings Associated with Documented Water Use Credits and Transfers](#)

The proposed use of water transfers would create a mess on the Monterey Peninsula:

MPWMD [Rule 28-B-1](#) (Dec 2013, [Ordinance No. 158](#)) requires CEQA review (EIR or MND) of any proposed water transfer. The local jurisdiction acts as the lead agency and MPWMD acts as a responsible agency. Having a local jurisdiction act as the lead agency for water transfers (water supply issues) can be problematic. First, local jurisdictions have no expertise and second they are highly motivated to see any proposed water increase take place.

The recent [Supplemental EIR](#) for the SWRCB funded [Pacific Grove Local Water Project](#) is an excellent example of a jurisdiction, acting as lead agency, making incorrect findings regarding water supply and use and in this case, the Cal-Am CDO in particular. Further, the MPWMD, as the responsible agency, accepted (encouraged) these incorrect findings. Several SEIR comment letters, including mine, explicitly stated that using the "saved" potable water during the CDO enforcement period would lead to violations of both Condition 2 and Section 19.2. However, the promise of water for new development was too great of a temptation for both Pacific Grove and the MPWMD. The City certified and MPWMD accepted the SEIR findings, which ended up establishing a [66 acre-foot entitlement](#) for the City with 9 acre-feet (which received no CEQA review) being appropriated by the MPWMD. Fortunately, the SWRCB recognized this error and placed [conditions on the funding](#) for the project that reversed the incorrect findings made in the City's certified SEIR. This recognition is also reflected in Condition 8d. of [WRO 2016-0016](#).

Another example is [SAVE OUR CARMEL RIVER et. al., Plaintiffs and Appellants, v. MONTEREY PENINSULA WATER MANAGEMENT DISTRICT et. al., Defendants and Respondents](#). On October 18, 2004, the District approved the application of Foursome Development Company for a Property-To-Jurisdiction Water Use Credit Transfer under District Rule 28-B. The application to transfer the water was brought before the District board less than a month before the water credit would have otherwise expired – November 1, 2004 – under operation of District Rules. The District Board approved the requested transfer to the City of Monterey. The City proposed that the transferred water later be returned to the same site for use. Before the Board acted on the requested transfer, the City of Monterey had acted as Lead Agency under CEQA. The City reviewed the water credit transfer and determined that the proposed water credit transfer could not have a significant effect on the environment and was exempt from the provisions of CEQA. The District acted as a Responsible Agency and followed the recommendation of the City. This determination was made in reliance of the Categorical Exemption under CEQA Guidelines Section 15302 (Class 2). The City of Monterey reasoned that water credit to be released to the originating site in the future would allow construction of a structure in similar size to the one that was demolished, and that Section 15302 allowed an exemption for replacement or reconstruction of existing structures on the same site when the new structure would have substantially the same purpose and capacity as the structure replaced. Approvals granted to the project by both the City of Monterey and three parties in a single action by Writ of Mandate challenged MPWMD: Save Our Carmel River, Patricia Bernardi and The Open Monterey Project. Judge Robert O’Farrell, who denied the petition on June 27, 2005, affirming the water credit transfer decisions of both the City and the District, heard the original matter. However, the Petitioners appealed this ruling and the Sixth District Court of Appeal reversed Judge O’Farrell’s earlier ruling and instead directed that an order granting the writ of mandate be issued from the Superior Court. Judge O’Farrell issued the Writ of Mandate After Appeal ([Exhibit 16-E](#)) on October 16, 2006.

The situation would become an even a bigger mess should the District change their rules to permit inter-jurisdictional transfers, which is a stated goal of theirs. The cryptic language in their Condition 2 proposal would seemingly permit inter-jurisdictional water transfers. Currently, the District does not permit inter-jurisdictional water transfers and never has.

Project Bella Hotel – an example of what’s motivating this proposal:

The [American Tin Cannery](#) (ATC) site, located in Pacific Grove, was once a Tin can production facility. It was transformed into a retail center back in the late 1970's and has been ever since. The proposed plan is to tear it down and replace it with a new 225 room hotel with retail and restaurants. The working name for the project is [Project Bella](#).

In April 2016 Pacific Grove held a special election, [PG Measure X](#), which [rezoned the ATC site](#) to permit hotel use, which was never a permitted use before. The proposed hotel site is made up of three parcels and a portion of a public street. Only one of these four uses water. The parking lot parcels and Sloat Ave. currently use no water. To better illustrate the ATC site, I've provided a detail of the existing and proposed conditions (p. 13, attached).

The District states (e-mail) the “capacity to use water” at the ATC site is 18.53 AF. That value comes from a 1991 use factor report taken over 25 years ago (pp. 14-15, attached). A 2002 report indicates 15.70 AF of current uses and 2.83 AF of “credits”. The District uses the highest documented value for determining a “pre-project” capacity to use water. This is a generous policy during a CDO but not necessarily a concern since Condition 2 restricts an increase in water use above the baseline of past use, which is the lesser of these two values: [1] documented capacity to use water and [2] average metered annual water use.

The ATC site has a deed restriction recorded (2014) that allows the District access to past Cal-Am billing records (pp. 16-17, attached). However, the District has never indicated what the baseline of past use is, per Condition 2. They only claim the site has 18.53 acre-feet of “credits” available for pre-project use.

Because this site was rezoned in 2016 Condition 2 would apply and would restrict any increase in water use above the baseline of past use. The developer’s Measure X campaign literature (p. 24, attached) claims the hotel would: “utilize no more potable water than is currently available to this project.” That’s all well and good but the District, City, and developer refuse to say what that “available” amount is per Condition 2.

Further, in the [audio recording](#) of their December 14, 2015 Legislative Advocacy Committee meeting, District staff describes how they intend to use the 9 AF they cynically appropriated from the potable water being freed up by the SWRCB funded Pacific Grove Local Water Project to supplement this hotel project. District staff mentions that a potential lender for Project Bella will likely require 24 AF of credits but the site, according to District staff, only has 18.5 AF (again, no mention of Condition 2). Based on this recording, it appears District staff is perfectly willing to “play games” and boost the water allocation for this site in order for the developer to secure financing. The audio suggests a willful disregard towards Condition 2 and the restriction it imposes on increased use of unlawful water at this site.

Having Project Bella move forward during the CDO enforcement period, by getting their proposal adopted, i.e., voiding Condition 2, is a manifest goal of District staff.

Summary:

Because the District’s proposal would undoubtedly lead to an increased use of unlawful water, which Condition 2 was specifically meant to restrict, I believe the CPUC would have to be notified, per ordering paragraph 7, of Decision 11-03-048:

“In the event the State Water Resources Control Board provides written direction to California-American Water Company interpreting WR 2009-0060 in a manner that conflicts with the orders in this decision, or modifies WR 2009-0060 in a manner that conflicts with the orders in this decision, California-American Water Company shall file a petition to modify this decision within 30 days of that Board action.”

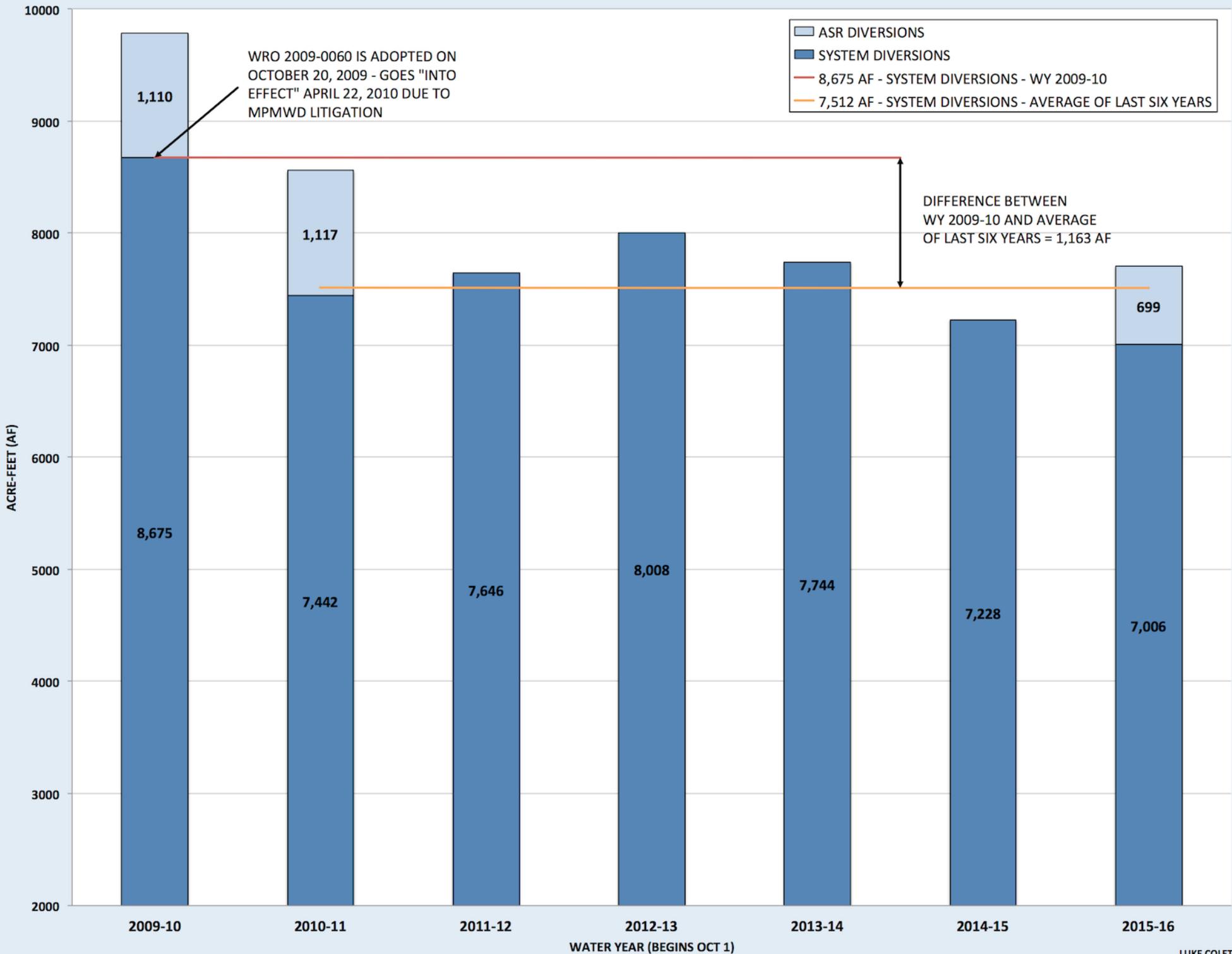
Further, I believe the District’s proposal would void Condition 2, not reinterpret it and thus the SWRCB would have to change the Cal-Am CDO in order to implement it.

Therefore, I urge the SWRCB to reject both MPWMD proposals, dated December 30, 2016 and August 15, 2016.

Instead, I urge the SWRCB to maintain the current interpretation, as detailed in their guidance letter, dated April 9, 2012. Further, both Cal-Am and the MPWMD need to work together more effectively so that Cal-Am billing records can be used to meet the CPUC requirement of a workable protocol for determining the past use baseline. One suggestion is to simply have the MPWMD submit a request and have Cal-Am perform the actual calculation (of average metered annual water use), per SWRCB guidelines. This way only a single number is exchanged.

Luke Coletti
Pacific Grove, CA

CAL-AM ASR AND SYSTEM DIVERSIONS FROM THE CARMEL RIVER DURING THE CDO



STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2009-0060

In the Matter of the Unauthorized Diversion and Use of Water
by the California American Water Company

Parties

**Water Rights Prosecution Team¹
California American Water Company**

Interested Parties

**Monterey Peninsula Water Management District, City of Carmel by the Sea,
City of Seaside, Seaside Basin Watermaster, Pebble Beach Company,
Monterey County Hospitality Association, City of Monterey, City of Sand City,
Division of Ratepayers Advocates of the California Public Utilities Commission,
Public Trust Alliance, Carmel River Steelhead Association,
Ventana Chapter of the Sierra Club, California Sportfishing Protection Alliance,
Planning and Conservation League, California Salmon and Steelhead Association,
National Marine Fisheries Service**

SOURCE: Carmel River

COUNTY: Monterey

CEASE AND DESIST ORDER

BY THE BOARD:

INTRODUCTION

The California American Water Company (Cal-Am or CAW) diverts water from the Carmel River in Monterey County. The water is used to supply the residential, municipal, and commercial needs of the Monterey Peninsula area (peninsula) communities. In 1995 the State Water

¹ The Water Rights Prosecution Team includes: (1) James Kassel, Assistant Deputy Director for Water Rights, (2) John O'Hagan, Manager, Water Rights Enforcement Section (3) Mark Stretars, Senior Water Resource Control Engineer, (4) John Collins, Environmental Scientist and (5) Staff Counsels Reed Sato, Yvonne West and Mayumi Okamoto. In addition, for purposes of complying with *ex parte* prohibitions, Kathy Mrowka, Senior Water Resource Control Engineer, is also treated as a member of the Prosecution Team.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT Cal-Am shall cease and desist from the unauthorized diversion of water from the Carmel River in accordance with the following schedule and conditions.⁴⁶

1. Cal-Am shall diligently implement actions to terminate its unlawful diversions from the Carmel River and shall terminate all unlawful diversions from the river no later than December 31, 2016.

2. Cal-Am shall not divert water from the Carmel River for new service connections or for any increased use of water at existing service addresses resulting from a change in zoning or use. Cal-Am may supply water from the river for new service connections or for any increased use at existing service addresses resulting from a change in zoning or use after October 20, 2009, provided that any such service had obtained all necessary written approvals required for project construction and connection to Cal-Am's water system prior to that date.⁴⁷

3. At a minimum, Cal-Am shall adjust its diversions from the Carmel River in accordance with the following:

a. Commencing on October 1, 2009,⁴⁸ Cal-Am shall not divert more water from the river than the base of 10,978 afa,⁴⁹ as adjusted by the following:

(1) Immediate Reduction: Commencing on October 1, 2009, Cal-Am shall reduce diversions from the river by 5 percent, or 549 afa.

⁴⁶ Attachment 1 to this order, "Table 1, Projected Reductions in Illegal Diversions from the Carmel River," shows the reductions in illegal diversions from the Carmel River that should result from conditions 1, 2 and 3 of this order.

⁴⁷ Multiunit residential, commercial or industrial sites may currently be served by a single water meter. The installation of additional meters at an existing service will not be viewed as a new service connection provided that the additional metering does not result in an increase in water use. Metering each unit of a multiunit building tends to increase accountability in the use of water and the effectiveness of water conservation requirements.

⁴⁸ Each water year runs from October 1 to September 30 of the following year.

⁴⁹ Cal-Am diverts 3,376 afa under legal rights and, on average, 7,602 afa without a basis of right. (3,376 + 7,602 = 10,978 afa).

Decision 11-03-048 March 24, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California-American Water Company (U210W) for an Order Authorizing and Imposing a Moratorium on Certain New or Expanded Water Service Connections in its Monterey District.

Application 10-05-020
(Filed May 24, 2010)

**DECISION DIRECTING TARIFF MODIFICATIONS
TO RECOGNIZE MORATORIUM MANDATED
BY STATE WATER RESOURCES CONTROL BOARD**

light of Condition 2. Within 45 days of the effective date of this decision, California-American Water Company shall request in writing of the State Water Resources Control Board a process or mechanism that will permit California-American Water Company to serve demonstrated and compelling institutional public health and safety water needs within the Monterey District, notwithstanding Condition 2 of WR 2009-0060. Within 10 days after receipt of a substantive response from the State Water Resources Control Board, California-American Water Company shall file an information-only letter as defined by Section 3.9 and pursuant to Section 6 of General Order 96-B reporting on the response to its request, and shall serve the information-only letter on the service list in Application 10-05-020.

3. California-American Water Company shall confer with Monterey Peninsula Water Management District and then consult with the State Water Resources Control Board to develop or select a workable protocol for determining the past use baseline as well as measuring increase in water use.

4. California-American Water Company shall ask the State Water Resources Control Board for written guidance with respect to any unresolved issues of interpretation or implementation concerning Condition 2 of WR 2009-0060, including any pertaining to requests by holders of water credits and entitlements from the Monterey Peninsula Water Management District.

5. Upon the receipt by California-American Water Company of the written concurrence of the Deputy Director of Water Rights of the State Water Resources Control Board with California-American Water Company's finding that a permanent supply of water is ready to serve as a replacement for the unlawful diversions of Carmel River water, California-American Water Company shall file

a Tier 1 advice letter transmitting the written concurrence and removing from its tariffs the special condition contained in Ordering Paragraph 1 of this decision.

6. In the event that the judicial outcome of the consolidated litigation in the Superior Court of Santa Clara (case nos. 1-10-CV-163328, 1-10-CV-183439, and 1-10-CV-183454) clarifies, limits, or nullifies WR 2009-0060 in whole or part in a manner that conflicts with the orders in this decision, California-American Water Company shall file a petition to modify this decision within 30 days of that judicial outcome.

7. In the event the State Water Resources Control Board provides written direction to California-American Water Company interpreting WR 2009-0060 in a manner that conflicts with the orders in this decision, or modifies WR 2009-0060 in a manner that conflicts with the orders in this decision, California-American Water Company shall file a petition to modify this decision within 30 days of that Board action.

8. Application 10-05-020 is closed.

This order is effective today.

Dated March 24, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK FERRON
Commissioners

EXISTING AND PROPOSED CONDITIONS FOR THE PROJECT BELLA HOTEL IN PACIFIC GROVE





MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

5 HARRIS COURT, BLDG. G
POST OFFICE BOX 85
MONTEREY, CA 93942-0085 • (831) 658-5601
FAX (831) 644-9558 • <http://www.mpwmd.dst.ca.us>

August 19, 2002

Mr. David Gandle, Senior Consultant
ConsultEcon
24 Thorndike Street
Cambridge, MA 02141

**Subject: On-Site Water Credits for The American Tin Cannery Outlet Center, 125 Ocean View Blvd,
Pacific Grove**

Dear Mr. Gandle:

This letter responds to an e-mail request on July 30, 2002, which was forwarded to me by Stephanie Pintar. I was asked to review the tenant information related to water credits for The American Tin Cannery Outlet Center in Pacific Grove. The results of this review are enclosed.

The American Tin Cannery Outlet Center, the current water credit available on the site is 2.83 acre-feet. The credit resulted from Commercial Water Use Group II and Group III tenant vacancies and conversion of those spaces to Group I commercial uses as reflected on current and past tenant maps in the District's file. Based on information provided by management at the American Tin Cannery Outlet Center, the gross square footage available for lease at The American Tin Cannery Outlet Center is currently 146,355 square feet. This was used as the basis for determining the existing water uses that are shown in Table 2, "The American Tin Cannery Outlet Center Current Uses".

It should be noted that current water use factors (District Rule 24, Table II, Commercial Water Use Factors) are subject to change by action of the District's Board of Directors. Changes in the factors could reduce or increase the amount of water credits available. A copy of Table II, Commercial Water Use Factors, is enclosed for your review.

Thank you for your patience, and please let me know if I can be of any further assistance. I can be reached at (831) 658-5601.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shawn Novack".

Shawn Novack
Conservation Representative

2 Enclosures

Mr. David Gandle, Senior Consultant
 August 19, 2002

Table 1

| AMERICAN TIN CANNERY OUTLET CENTER PAST USES (1991) | | | | |
|--|------------|----------------------|--------------------------|--------|
| USE | SQUARE FT. | OTHER FACTOR (SEATS) | FACTOR | DEMAND |
| Group I Uses | 132,294 | | 0.00007 | 9.349 |
| Group II Uses | 2674 | | 0.0002 | .2832 |
| Group III Uses | 2,674 | | | |
| Restaurant | 12,006 | 445 | 0.020 | 8.90 |
| Total Square Feet | | 146,976 | Total Acre-feet of Water | 18.53 |

Table 2

| AMERICAN TIN CANNERY OUTLET CENTER CURRENT USES (AUG 2002) | | | | |
|---|------------|----------------------|--------------------------|--------|
| USE | SQUARE FT. | OTHER FACTOR (SEATS) | FACTOR | DEMAND |
| Group I Uses (including current vacant spaces) | 139,949 | | 0.00007 | 9.80 |
| Group II Uses | - | | 0.0002 | - |
| Group III Uses | | | | |
| Restaurant | 6,406 | 295 | 0.020 | 5.9 |
| Total Square Feet | | 146,355 | Total Acre-feet of Water | 15.70 |



Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Filer

CRALMA
5/15/2014
13:55:42

DOCUMENT: **2014022362**

Titles: 1/ Pages: 3



| | |
|----------|---------|
| Fees.... | 27.00 |
| Taxes.. | |
| Other... | 2.00 |
| AMT PAID | \$29.00 |

Recording Requested by:
Monterey Peninsula Water Management District

And When Recorded Mail To:
Monterey Peninsula Water Management District
Post Office Box 85
Monterey, California 93942-0085

**NOTICE AND DEED RESTRICTION
PROVIDE PUBLIC ACCESS TO
WATER USE DATA**

NOTICE IS GIVEN that the Monterey Peninsula Water Management District (hereinafter referred to as the Water Management District), duly formed as a water district and public entity pursuant to the provisions of law found at Statutes of 1977, Chapter 527, as amended (found at West's California Water Code Appendix, Chapters 118-1 to 118-901), has approved water service to the real property referenced below as "Subject Property."

NOTICE IS FURTHER GIVEN that the real property affected by this agreement is situated in the **City of Pacific Grove:**

**109 OCEAN VIEW BLVD, PACIFIC GROVE, CA 93950
{UNIVERSITY ADD TO PACIFIC GROVE ALL OF BLK 1}
ASSESSOR'S PARCEL NUMBER 006-231-001-000**

This real property is hereinafter referred to as the "Subject Property." The Subject Property is located within the jurisdiction of the Water Management District. **Foursome Development Company, a California General Partnership**, (hereinafter referred to as "Owner(s)"), is record Owner(s) of the Subject Property.

NOTICE IS FURTHER GIVEN that Owner(s), and each of them, irrevocably grant to the Water Management District, the right to access and disseminate to the public-at-large any and all information relating to delivery and/or use of water from any and all sources, including but not limited to private Wells, municipal systems and/or Public Utilities such as the California-American Water Company on the Subject Property.

NOTICE IS FURTHER GIVEN that all water use data relating to delivery and/or use of water on the Subject Property shall be publicly disclosed.

NOTICE IS FURTHER GIVEN that this agreement is binding and has been entered into by Owner(s), and each of them, and constitutes a mandatory condition precedent to receipt of regulatory approval from the Water Management District relating to the Subject Property. This agreement attaches to the land and shall bind any tenant, successor or assignee of Owner(s). The agreement to release water use data shall bind future property owners and/or tenants to the same extent it binds the



current Owner(s) and each is deemed to have waived any right to privacy to the release of this data for the duration of this restriction.

The Owner(s) and the Water Management District each intend that this Notice and Deed Restriction act as a deed restriction upon the Subject Property, and that it shall be irrevocable during all times that water use data are disclosable under its terms. This document shall be enforceable by the Water Management District or any public entity that is a successor to the Water Management District.

The Owner(s) elects and irrevocably covenants with the Water Management District to abide by the conditions of this Notice and Deed Restriction to enable issuance of Water Permit No. 33198. But for the limitations and notices set forth herein, approval of this Water Permit would otherwise be withheld and found to be inconsistent with the Water Management District Rules and Regulations.

This Notice and Deed Restriction is placed upon the Subject Property. Any transfer of this property, or an interest therein, is subject to its terms.

If any provision of this Notice and Deed Restriction is held to be invalid, or for any reason becomes unenforceable, no other provision shall thereby be affected or impaired.

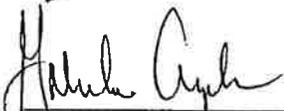
The undersigned Owner(s) agrees with and accepts all terms of this document stated above, and requests and consents to recordation of this Notice and Deed Restriction Provide Public Access to Water Use Data. The Owner(s) further agrees to notify any present and future tenant of the Subject Property of the terms and conditions of this document.

OWNER(S) agrees to recordation of this Notice and Deed Restriction in the Recorder's Office for the County of Monterey. Owner(s) further unconditionally accepts the terms and conditions stated above.

(Signatures must be notarized)

Foursome Development Company, a California General Partnership

By:  Dated: 5/12/14
Theodore J. Balestreri, Managing General Partner

By:  Dated: 5/14/2014
Gabriela Ayala, Conservation Representative
Monterey Peninsula Water Management District

Public Review

O.D.

Analysis of Water Savings Associated with Documented Water Use Credits and Transfers

Prepared for

**Monterey Peninsula
Water Management District**

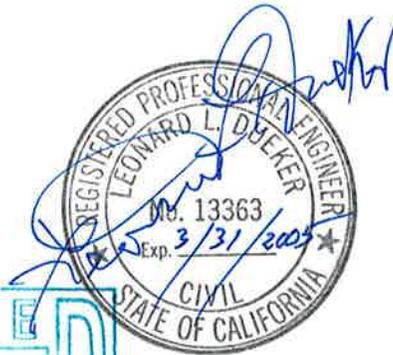
June 1, 2001

Prepared by

DCI INC.

Problems to Challenges to Opportunities

815 SOUTH ROCHESTER
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(480) 218-5405
FAX: (480) 699-1978



Analysis of Water Savings Associated with Documented Water Use Credits and Transfers

SUMMARY PREFACE

This Report contains two phases and three appendices.

Phase 1, which was prepared in February, 2001 is an analysis of the "ORIGINATING SITES".

SUMMARY:

It was anticipated that a Pre-Credit use of 148 acre feet would result in 82 acre feet remaining for use on the original sites, with a total Projected Savings of 66 acre feet. After transfer of 56 acre feet of the Projected Savings, 10 acre feet would remain for Set Aside by the District.

The net result, however, is that the total Projected Post-Credit Use on Donor and Receiving Sites increased to 175 acre feet, an increase of 18% over the Pre-Credit use of 148 acre feet, and the District never received the 10 acre feet it had anticipated receiving for it's use.

Analysis of Water Savings Associated with Documented Water Use Credits and Transfers

Phase 1.....ORIGINATING SITES

SCOPE OF WORK

Prepare an analysis of the water use data provided by the Monterey Peninsula Water Management District regarding whether or not water savings from the various Reductions in Commercial Use have occurred and quantify the extent of the water savings.

PROCESS

1. DCI reviewed the following material, copies of which are contained in the Appendix A:
 - a. Scope of Work
 - b. Memo of September 6, 2000 ..Pintar to Fuerst
 - c. Researchable Water Credit Samples
 - d. Water Credit Analysis Summary..dated September 2000 (one page)
 - e. Water Credit Analysis Summary..dated September 18, 2000 (two pages)

2. DCI prepared TABLE 1, using the Water Credit Analysis Summary...dated September, 2000, listed above as item d.

DCI added the following columns to this Summary:

| <u>Column Number</u> | <u>Description</u> |
|----------------------|--|
| (2) | Method of calculating the Anticipated Savings for each Sample |
| (4) | The ratio of the Anticipated Savings to the actual Pre-Credit Use calculated as a percent |
| (8) | The ratio of the Actual Average Savings to the Anticipated Savings calculated as a percent |

3. DCI prepared graphs 1 through 8
4. DCI prepared Exhibit 1
5. DCI prepared Table 2

OBSERVATIONS

REVIEW

Review of Table 1 revealed that in 7 of the 15 samples, the ***Anticipated Savings*** were **GREATER** than the ***Actual Pre-Credit Use***. The Anticipated Savings varying from 118% to 620% of the Pre-Credit Use.

In order to achieve the Anticipated Savings in these Samples it would be necessary for the water user to take its use to ZERO, and then also provide the District with additional water from another source.

In Samples 1 through 13 (13 of the 15 Samples) the Actual Savings were LESS than the Anticipated Savings, only 2 of the 15 Samples had Savings that were More than the Anticipated Savings.

Graphs 1 through 4 confirmed this pictorially, and Graphs 5 through 8 were prepared to review the data of some of the Samples in more detail.

Table 1 also shows that the Actual Average Savings of the 15 Donor Sites was about 29 acre feet, or about one-half the amount of the Anticipated Total Savings of 66 acre feet. Although this is not as much as projected, it is still a net savings by the Donor Sites.

IMPACT

Exhibit 1 was prepared to pictorially present and help understand the overall impact and net result.

It was anticipated that the Pre-Credit use of 148 acre feet would result in 82 acre feet remaining for use on the original Donor Sites, and 56 acre feet of the 66 acre foot Calculated Projected Savings (10 acre feet of which the District would retain) would be transferred.

The Actual Post Credit Use by the Donor Sites was 119 acre feet, instead of the projected 82 acre feet. This resulted in a deficit of 37 acre feet.

The 56 acre feet of Calculated Transferable Water Credits plus the 119 acre feet of Actual Average Post Credit Use equals a Projected Post-Credit Use on the Donor and Receiving Sites of 175 acre feet, instead of the Actual Average Pre-Credit Use on the Donor Sites of 148 acre feet. This is an 18% Net Increase in Total acre feet of Water Use and a negative Net Water Savings on the Donor & Receiving Sites of 27 acre feet.

SUGGESTION

DCI has considered the suggestion of staff that the "average factors" to be used in the future be revisited and possibly revised.

After consideration, DCI wonders if the use of "average factors" is the preferred methodology that should be used to calculate future Anticipated Average Savings.

Table 2 was prepared to see if there was something that could be done to review proposed future Credits, based on what appears to have been a problem with these Samples. It is suggested that calculations similar to those shown above the Double Line in Table 2 be used each time as a "check", no matter what methodology is used.

TABLE 1
Monterey Peninsula Water Management District
Water Credit Analysis Summary
 (All Values In Acre-Foot Per Year)

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|---------------|--------------------------------------|------------------------------|--|--|--|---------------------------------|---|--------------------------------|
| Sample Number | Anticipated Savings Calculated Using | Anticipated Savings AF/YR | Percent Anticipated Savings is of Actual Pre-Credit Use % | Actual Average Pre-Credit Use AF/YR | Actual Average Post- Credit Use AF/YR | Actual Average Savings AF/YR | Percent Actual Average Savings is of Anticipated Savings % | Actual vs. Anticipated Savings |
| 1 | Factor | 1.291 | 620.67% | 0.208 | 0.168 | 0.040 | 3.098% | Less |
| 2 | Avg Use | 27.87 | 73.83% | 37.751 | 12.698 | 25.053 | 89.892% | Less |
| 3 | Wtr Rationing Base | 12.784 | 18.94% | 67.486 | 82.449 | (14.963) | -117.04% | Less |
| 4 | Factor | 0.115 | 6.75% | 1.704 | 1.669 | 0.035 | 30.435% | Less |
| 5 | Factor | 0.17 | 22.94% | 0.741 | 0.592 | 0.149 | 87.647% | Less |
| 6 | Factor | 0.088 | 58.67% | 0.15 | 0.186 | (0.036) | -40.909% | Less |
| 7 | Factor | 1.262 | 172.64% | 0.731 | 0.488 | 0.243 | 19.255% | Less |
| 8 | Wtr Rationing Base | 1.48 | 175.15% | 0.845 | 0.73 | 0.115 | 7.770% | Less |
| 9 | Factor | 1.383 | 111.08% | 1.245 | 0.767 | 0.478 | 34.563% | Less |
| 10 | Factor | 2.73 | 12.88% | 21.203 | 19.174 | 2.029 | 74.322% | Less |
| 11 | Factor | 0.4 | 142.86% | 0.28 | 0.202 | 0.078 | 19.500% | Less |
| 12 | Factor | 9.001 | 126.99% | 7.088 | 0 | 7.088 | 78.747% | Less |
| 13 | Factor | 0.789 | 118.11% | 0.668 | 0 | 0.668 | 84.664% | Less |
| 14 | Avg Use | 6.558 | 77.98% | 8.41 | 0.258 | 8.152 | 124.306% | More |
| 15 | Factor | 0.14 | 65.73% | 0.213 | 0 | 0.213 | 152.143% | More |
| | | 66.061 | 44.42% | 148.723 | 119.381 | 29.342 | | |

These Samples have Anticipated Savings that are greater than the Actual Pre-Credit Use

The Unite HERE Union is purposely spreading false information on Measure X.

Here is the Truth about **Measure X!**

Water

LEED Platinum standards require the innovative methods for conservation of water.

"Water conservation technologies currently available in the marketplace can be incorporated into a LEED platinum building to enable the proposed hotel at the ATC to be designed and operated to utilize no more potable water than is currently available to this project."

Barry Giles

Founder & CEO, BuildingWise, LLC

Barry Giles is a founding member of the US Green Building Council's LEED Existing Building Core Committee, a LEED fellow and a member of the San Francisco Green Building Task Force. BuildWise has over 150 LEED buildings certified or in the process of being certified.

Traffic

Hotels generate less traffic than retail centers.

Hotel Trip Generation

(Estimated vehicle trips daily)

Trip Generation Per Room – 8.17

Trip Generation All Rooms – 1840

Specialty Retail Center Trip Generation

(Estimated vehicle trips daily)

Trip Generation Per 1000 sq. ft. – 44.32

Total Trip Generation – 3546

A Hotel at 100% occupancy at the American Tin Cannery site **would reduce the number of daily traffic trips** generated by the Specialty Retail Center (at 50% occupancy) **by approximately 50%.**

Source: Trip Generation, Institute of Transportation Engineers (ITE), Eighth Edition

Size

Project Bella will be the same height as the existing building.

"We have been directed by Domaine Pacific Grove, LLC to design the new hotel to achieve LEED Platinum certification and to design the project in accordance with the existing zoning constraints pertaining to the site, including a height limitation of 40'.

Our initial planning and the site plans, which have been presented to the public, reflect those height and zoning guidelines."

Mark Hornberger

President & Founding Principal, Hornberger + Worstell

Hornberger + Worstell is an internationally recognized architecture firm with an extensive portfolio of LEED certified buildings, including LEED Gold and LEED Platinum projects. They designed the W Hotel in San Francisco, which recently achieved LEED Platinum certification.

YES on X!

Measure X is endorsed by the Monterey Herald, Monterey County Weekly, The Carmel Pine Cone, Cedar Street Times and KSBW-TV.

To ensure the preservation of Pacific Grove's long-term vitality, we urge you to **VOTE Yes on Measure X** with your mail in ballot or at the polls on Tuesday, April 19!

To endorse Measure X go to: www.yesonmeasurexpg.com

For more information call 831.241.6250

Paid for by Pacific Grove Friends of Project Bella Yes on Measure X, funded by Domaine Pacific Grove LLC