

April 19, 2017

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

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

Mr. O'Hagan,

It's Déjà vu all over again

On January 15, 2008, the SWRCB issued a draft CDO requiring Cal-Am to decrease its use of Carmel River water by 50% over a seven-year period beginning in 2009. The draft CDO stated that in the 12 years since Order 95-10 was issued, Cal-Am had failed to reduce its illegal diversions from the Carmel River beyond an initial 20% reduction and that Cal-Am will continue this practice unless the SWRCB takes further action. The draft CDO relied upon this critical finding:

“The current water management strategy used by Cal-Am/MPWMD has not resulted in any significant reduction of unlawful diversions from the Carmel River since 1998. Instead, it appears that water savings resulting from conservation efforts have been redirected to support marginal increases in development. (Draft CDO at p. 5.)”

The District's proposal would also redirect water savings, realized by conservation efforts and the enforcement of Condition 2, towards supporting increased development.

MPWMD - do as I say not as I do

The District's proposal would eliminate the use of water meter data for determining a past use baseline and is in conflict with their own rules that rely on meter data to make similar determinations. For example, to determine a Water Use Credit [MPWMD Rule 25.5-F-2](#) states the General Manager shall:

“Quantify the Water Use Capacity of the Site using the water use factors from Rule 24, Tables 1 and/or 2. If no factor is available on Table 2 or if the use is substantially different than any of the uses shown on Table 2, the General Manager may make an estimate based upon water records showing the average use over a minimum of eight (8) years.”

Another example is the [SWRCB funded](#) Pacific Grove Local Water Project. Immediately after being approved for funding (Nov 2015) the District created an entitlement for the "saved" potable water freed-up by the project (see [MPWMD Ord. 168](#)). In order to determine the entitlement amount the District analyzed 10 years of water meter data and calculated an average. The average of past use (2005 - 2015) was 87.9 acre-feet per year.

Finally, [MPWMD Ord. 117](#), a proposed draft ordinance, included a rule for the Calculation of Transferable Water Use Credits which is an exact match to the method used for determining a past use baseline per the [April 9, 2012](#) Condition 2 SWRCB guidance letter - Rule 28-A-9-C: “The General Manager shall calculate transferable credit from demolition of a use by using the lesser of (a) factored use; or (b) average actual water use.”

The District's proposal seeks to eliminate an accurate pre-project past use baseline and means of determining a post-project increase in water use, which can only be realized using water meter data. Further, because the District fails to provide any analysis of recent "wet water" demand at the sites it has identified in both their [Jan 18, 2017 memo](#) and [Apr 7, 2017 email](#), it's impossible for them to claim how much dormant use will end up being activated or that it will be a "de minimus" amount.

CAW-MPWMD Non-Disclosure Agreement

In [Decision 11-03-048](#) the CPUC ordered Cal-Am and the MPWMD "to develop or select a workable protocol for determining the past use baseline as well as measuring increase in water use". Now, more than six years later, the District is claiming access to Cal-Am meter data has prevented this order from being complied with. However, access to meter data might not be as difficult as the District is claiming. In [Decision 09-02-006](#) the CPUC ordered Cal-Am and the MPWMD to execute a "reasonable non-disclosure agreement" to allow the District access to Cal-Am customer data. The SWRCB should consult with Cal-Am and the CPUC to determine if the [CAW-MPWMD Non-Disclosure Agreement](#), dated June 22 2009, can be used to provide the District with a calculation of average metered annual water use, per SWRCB guidelines, so Condition 2 of WRO 2009-0060 can be properly managed and enforced. One suggestion is to simply have the MPWMD submit a request and have Cal-Am perform the actual calculation. This way only a single number is exchanged.

MPWMD gets into the hotel business

As described in my [Jan 17, 2017 comment letter](#), moving the Project Bella hotel forward during the CDO enforcement period is a manifest goal of District staff. Mr. Stoldt further proves this in his [Apr 7, 2017 email](#), where he claims:

"On the other hand, a proposed hotel project (Project Bella) at the site of the American Tin Cannery (ATC) is being opposed by a local Pacific Grove resident who cites Condition 2 of the CDO as a basis. Yet that property's situation is identical to the Aquarium's learning Center."

The proposed Project Bella hotel and the Aquarium's Learning Center are not even remotely similar. In the case of Project Bella the local zoning had to be changed to permit hotel use; there was no zoning change for the Learning Center. Further, as far as the current enforcement of Condition 2 is concerned, the Learning Center is not a change in MPWMD use, since the type of water permit issued (non-residential, in this case) does not represent a change relative to the site's previous use. Nor does it represent a change in use in terms of local land use. It seems like Mr. Stoldt is not familiar with the current criteria used by Cal-Am and the SWRCB for making these determinations. The public also needs to be better informed about Condition 2, which the District has avoided doing for over five years.

Here is additional background information regarding Project Bella: In 1986 the citizens of Pacific Grove passed Measure C, which requires any new hotel development to be approved by a vote of the people. 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 city street. Only one of the four uses water (see p. 4). With Project Bella, as opposed to the Learning Center, two dry parking lots and a condemned city street would get water under the District's proposal. Further, Condition 2 was actually the main topic of my rebuttal to the argument in favor, as found in the voter guide (see p. 5). Far from being opposed by "a local resident", as Mr. Stoldt claims, 2,111 Pacific Grove voters (41%) agreed with me and voted NO on Measure X and NO to the dishonest attempts to bypass Condition 2 (see p. 6).

Summary:

I believe the District's proposal would require the CDO to be reopened. Further, the proposal is not aligned with ordering paragraph 3 of CPUC [Decision 11-03-048](#). I urge the SWRCB to reject the MPWMD proposal(s). I also urge the SWRCB to maintain and refine the current interpretation, as detailed in their guidance letters, dated [April 9, 2012](#) and [May 31, 2013](#). Lastly, the SWRCB should consult with both Cal-Am and the CPUC to verify the CAW-MPWMD non-disclosure agreement can be used to provide the average metered annual water use for a given service address.

Luke Coletti
Pacific Grove, CA



MEASURE X CITY OF PACIFIC GROVE

ARGUMENT IN FAVOR OF MEASURE X

Project Bella will be Pacific Grove's only full-service hotel. This Measure, to allow a hotel as a permitted use at the American Tin Cannery location, will provide significant long-term benefits to the citizens of the City of Pacific Grove:

- Recognition of Pacific Grove as a world-class destination and an innovative leader in conservation and sustainability
- Banquet, meeting, and reception rooms that will enable Pacific Grove to host large and small events, keeping that business in Pacific Grove
- New luxury travelers who will patronize Pacific Grove restaurants, shops, and other businesses
- State-of-the-art design, construction, and operational programs and technologies, as one of the world's most sustainable hotels, that will save and recycle significant amounts of water and energy and reduce pollution and greenhouse gases
- An ideal location at the edge of town that will help mitigate traffic impacts and provide additional needed parking for the City, resulting in reduced downtown congestion
- A visitor and interpretive center and museum that will celebrate Pacific Grove's extraordinary culture, its heritage and historic character, and its unequalled scenic beauty
- New revenues from transient occupancy taxes, property taxes, and sales and use taxes to support our library, police, fire department, parks, and other City services and operations
- Three hundred permanent high quality hotel jobs for workers of all skill and education levels, many of whom will be residents of Pacific Grove, plus hundreds of high quality construction phase jobs, many of which will benefit Pacific Grove businesses and residents
- Direct spending in Pacific Grove by the hotel for a wide range of locally available goods and services, plus local expenditures by many Project Bella employees, who will "shop local," both during construction and when the hotel is operational

To ensure preservation of Pacific Grove's long-term vitality, we urge you to vote YES on this Measure.

/s/ Bill Kampe, Mayor

/s/ Carmelita Garcia, Former Mayor

/s/ Richard Stillwell, Civic Leader

/s/ Margaret Jean Anton, Retired Teacher

/s/ Jeanne C. Byrne, Former Mayor

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE X

The subject property should not be rezoned until a new water source is available to Pacific Grove, which obtains water from California American Water Company (Cal-Am). Cal-Am is subject to a Cease and Desist Order (CDO) from the state of California, which ordered it to terminate all unlawful diversions from the Carmel River. The CDO also prohibits any intensification of water use at existing service addresses resulting from a change in zoning. The Bella Hotel zoning change and proposed 160 rooms and suites (divisible into 225 separate rooms, along with restaurants and retail) will surely result in an intensification of water use compared to the current use.

Since being notified by the State in 1995, Cal-Am has continued to take substantially more water from the Carmel River than their license allows. This has left the river in ruin. Citizens have saved water to offset the effects of the drought and the impending CDO deadline, only to face rate increases so that Cal-Am can make up for lost billings.

Clearly, the Bella developers feel assured that in spite of the CDO they can use more water. Additional water use could trigger further mandated cutbacks and yet the City and Water District persist with their dishonest water entitlement scheme. Bella developers get more water while we conserve and pay more. The argument in favor is silent about water but you shouldn't be. A NO vote on Measure X is a YES vote for honest water.

/s/ Luke Coletti, Citizen Activist

SPECIAL MUNICIPAL ELECTION

April 19, 2016

Summary Report

CITY OF PACIFIC GROVE

Final Official Report

Registration & Turnout	9,338	Voters
PP Turnout	1,184	12.68%
VBM Turnout	3,950	42.30%
Total ...	5,134	54.98%

Measure X	7/7	100.00%
YES	3,016	58.83%
NO	2,111	41.17%
Total ...	5,127	100.00%