

California Environmental Law Project Re: Lauffer July 17 Letter
August 1, 2017

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Mr. Michael Lauffer
Acting Executive Director—Chief Counsel
SWRCB
PO Box 2000
Sacramento, CA 95812-2000

Subject: Sierra Club Response to MPWMD Letter Dated July 17, 2017

Dear Mr. Lauffer:

In its July 17, 2017 letter concerning Condition 2 of WRO 2009-0060, the District proposes the following language to be included in a SWRCB “interpretive letter”: “For purposes of interpreting Condition 2, the phrase “any increased use of water at existing service addresses “ shall mean increased use at an existing residential or non residential site in excess of the pre-project use, adjusted for credit from water saved on a site, and/or a debit to a jurisdiction’s allocation of water, as permitted and authorized by the MPWMD under its Rules and Regulations.....”

Sierra Club remains concerned about this language for many of the same reasons articulated in its past letters, concerning the District’s proposals. See Sierra Club and PCL letters dated 2/1/2017, 3/10/2017, and 3/27, 2017. Sierra Club believes that the proposed MPWMD language would permit, pursuant to Rule 28 of the District, transfer of a commercial water credit to a jurisdiction’s water allocation, which jurisdiction would have discretion to debit its allocation of water to allow a new or expanded use at any site in the jurisdiction. Rule 28 expressly allows transfer of commercial water credits to a jurisdiction to be included as part of its allocation of water, and delegates authority to that jurisdiction to use that water credit for creation of new commercial uses or expanded commercial uses. Rule 28(B) (2), (5), and (8).

In fact such a proposal was recently made in Pacific Grove. In its Initial Study for the Ligna IV, LP Water Credit Transfer Project, dated March 31, 2017, the City described the project as “the transfer of a water use credit from a private entity (Ligna IV.....) to the City of Pacific Grove, per MPWMD Rule 28.....The water use credit in question is in the amount of 3.2 acre feet per year (afy) and emanates from water conservation measures implemented at 709 Lighthouse Avenue in the City. By transferring the credit to the City to essentially hold for future use by the proponent, the future use would not be limited to one location or use , but must be consistent with applicable rules of the water district and the SWRCB.” Initial Study, page A-1.

Sierra Club remains concerned that although the proposed Ligna IV project (transfer of a water credit) seemed to be structured to provide a holding period

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that would avoid expiration of the water credit, and thus later be still available to the transferer, there could be a transfer of a water credit to a jurisdiction that could result in a debit to the jurisdictional allocation that would allow the jurisdiction to approve use of the water credit (by a debit to the water allocation for the District) for a completely new or expanded use at a completely different site (under different ownership) in that jurisdiction. Such a result, Sierra Club believes is not consistent with Condition 2's prohibition on diversions from the Carmel River for new service connections or for any increased use at existing service addresses resulting from a change in zoning or use."

Laurens Silver
Attorney for Sierra Club