

## Order WR 2009-0060

### Resolution of Condition 2 for Existing Service Addresses

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#### **Background**

Condition 2 of Order WR 2009-0060 states “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.”

There is no disagreement between local land use agencies, California American Water Company (Cal-Am), the Monterey Peninsula Water Management District (the District), or the State Water Resources Control Board (SWRCB) over new service connections and the existing moratorium on the setting of new meters is recognized and enforced by all.

However, there has been longstanding confusion on the Monterey Peninsula over interpreting Condition 2 as it relates to existing service addresses. There has not been a clear understanding of terms such as “change in zoning or use” or “increased use”. Further, it has been recognized that Cal-Am is not a land use agency and is not apprised of all changes or renovations to properties, nor is Cal-Am equipped to distinguish changes in water consumption at an existing service connection due to an existing use or from a new use due to a change in zoning or use.

The goal of this memo is to clarify the Monterey Peninsula community’s proposed interpretation of Condition 2.

#### **Findings**

The Monterey Peninsula community is committed to securing a new water supply and adhering to the Cease and Desist Order, including the moratorium on new connections and ensuring economic growth is not promoted at the expense of the Carmel River.

Residential and non-residential water use will vary over time based on vacancies, behaviors, climate, family dynamics, business practices, and economic conditions making actual water use records for a specific period an inconsistent baseline for determining “increased use.”

The community needs a clear, predictable, objective set of rules to allow investment in businesses and properties.

The District has an almost 40-year record of regulatory rules and regulations governing the use of water. District Rule 23 governs the issuance of water permits to “ensure that total quantity of water permitted for all projects ... within a Jurisdiction shall not exceed that Jurisdiction’s total Allocation” and “does not exceed the production limit ... of the Water Distribution System serving the project.” Hence, on a project by project basis, or “micro” level, the District’s regulatory approach is no increase in the capacity to use water beyond what is already “in the system.”

Jurisdictional Allocations of water were made prior to Order 95-10 and no new allocations have been made since. Remaining unallocated water is severely limited (approximately 90 acre feet), and most is allocated to projects requiring new meters subject to the moratorium.

District Rule 24 provides a method of calculating residential and non-residential Water Use Capacity based on fixture units, MWELo landscape standards, and commercial factors, an industry-recognized practice. For decades, the District's permitting protocol has been familiar to property owners, businesses, architects, and municipal planning departments on the Monterey Peninsula.

Residents and businesses can make investment in water savings on a site and repurpose the saved water credit without an increased use. District Rule 25.5 governs the creation of such a credit.

The District and Cal-Am have multiple rules and incentives for continued reductions in customer demand for water throughout the system. The local regulatory framework is geared towards managing water use at the system-wide "macro" level and has resulted in almost 3,000 acre feet of demand reduction since the CDO was issued.

### **Proposed Interpretive Language**

Recognizing that the District's regulatory framework is aligned with the CDO and "no new water", the District has proposed that the CDO be applied on the "macro" level ensuring that the effective diversion limits (EDL) are met, but flexibility be allowed at the "micro" level using the District's existing permit process to determine how existing service addresses are evaluated. The CDO does not need to be amended, however new interpretive language should be adopted. Proposed language, including footnotes, is as follows:

" 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<sup>1</sup>, 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.<sup>2</sup> "

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<sup>1</sup> Water Use Capacity, Capacity, Site, Water Use Credit, Jurisdiction, and Allocation are all defined terms in District Rule 11.

<sup>2</sup> District Rule 23 governs Water Permits, Rule 24 the calculation of Water Use Capacity, and Rule 25.5 credits for investment in water savings.