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ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

**APR 09 2012**

In Reply Refer to:  
MJQuint:262.0(27-01)

California American Water - Monterey  
c/o Tim Miller  
1033 B Avenue, Suite 200  
Coronado, CA 92118

Dear Mr. Miller:

ORDER WR 2009-0060; CALIFORNIA PUBLIC UTILITIES COMMISSION DECISION 11-03-048

Thank you for your November 29, 2011 letter regarding the California Public Utilities Commission (Commission) Decision 11-03-048 (D. 11-03-048) and a need for clarification from the State Water Resources Control Board (State Water Board) related to Condition 2 of Order WR 2009-0060. You identify that Commission D. 11-03-048 imposes three separate obligations on Cal-Am with respect to implementing a moratorium and consultation with the State Water Board. Your letter recites the requirements from the Commission's decision, then sets forth Cal-Am's proposal, followed by a description of a meeting with the Monterey Peninsula Water Management District (MPWMD). This response includes your recital of the Commission decision, Cal-Am's proposal and the State Water Board's responses to each proposal in the order presented in your letter.

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 increase use of water 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."

**Ordering Paragraph 2 of D.11-03-048 states:**

California-American Water Company shall confer with Monterey Peninsula Water Management District on the subject of how best to serve demonstrated and compelling institutional public health and safety water needs within the Monterey District in the light of Condition 2 [of Order WR 2009-0060].

Cal-Am's Proposal: Cal-Am proposes that upon the MPWMD finding that an institutional project presents a demonstrated and compelling public health and safety need that warrants an exception to Condition No. 2, Cal-Am will cooperate with the interested institution and MPWMD staff to meet with State Water Board staff and request that the State Water Board issue an exception from Condition 2. You state that the MPWMD agreed that Cal-Am's approach would best address any identified institutional health and safety needs.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

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State Water Board's Response: The State Water Board generally agrees with the proposed procedure of requesting an exception from Condition 2 for public health and safety needs, provided: (1) the procedure allows adequate time for State Water Board staff to review the proposed exception; and (2) expanded water service is not provided prior to the State Water Board granting such an exception. Prior to approving any exception to Condition 2, Cal-Am must be able to demonstrate that the Carmel River is the only available and viable water supply to meet the public health and safety need.

**Ordering Paragraph 3 of D.11-03-048 states:**

Cal-Am shall confer with MPWMD and then consult with the State Water Board to develop or select a workable protocol for determining the past use baseline as well as measuring increase in water use.

Cal-Am's Proposal: Cal-Am proposes that an increase in water use will be determined by comparing the estimated consumption of the proposed use, determined by the MPWMD using MPWMD's fixture count or commercial factor method, to the lower of the fixture count for the existing use, or the five year historical average of actual water use for the service address. MPWMD suggests using a factor to factor comparison only (and not comparing to actual historical use) because comparing to prospective use based on fixture unit counts to actual usage may induce prospective property sellers to artificially increase water use to facilitate changes in use by prospective buyers.

State Water Board Response: The State Water Board agrees to meet and discuss this matter. The potential for property owners to artificially increase water use to obtain a higher historical water use baseline is of concern. Until a determination to the contrary is made, 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 from the fixture unit count.

**Ordering Paragraph 4 of D.11-03-048 states:**

Cal-Am shall ask the State Water Board for written guidance with respect to any unresolved issues of interpretation or implementation concerning Condition 2 of Order WR 2009-0060, including any pertaining to requests by holders of water credits and entitlements from the MPWMD.

Cal-Am's Proposal: Cal-Am and MPWMD identified the following issues:

**Changes in "Use"**

Condition No. 2 of Order WR 2009-0060 prohibits Cal-Am from serving an increased use of water at an existing service address due to a change in zoning or use. [Footnote 2 states "There has been little debate that a "change in zoning" is a Legislative act by the local land use authority that changes the use allowed as of right to a piece of real property. If the State Water Board had a different intent when adopting Order WR 2009-0060, we request clarification of the State Water Board's intent."] Because the word "use" is included in the same phrase as "zoning," Cal-Am interprets that phrase to reference local land use regulations. Therefore, whether there is a change in "use" depends on how the local land use regulations classify businesses; however such classifications may vary by jurisdiction, frequently contain illustrative and not exhaustive lists, and may vary from MPWMD regulations regarding a change in use. We request that the State Water Board clarify how a "change in use" is to be determined for the purposes of complying with Order WR 2009-0060.

State Water Board Response: The intent of Condition 2 is to limit an increase in water consumption from the Carmel River that may be caused by regional or local zoning and land use changes to the conditions that existed at the time of the Order. On October 20, 2009, the date of Order WR 2009-0060, each existing service connection had a specific zoning and use designation by both MPWMD and local land use authorities, and some prospective users may have obtained all necessary written approvals required for project construction and connection to Cal-Am's water system. The State Water Board concludes that 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.

### Use of Water Credits

Under the MPWMD's rules and regulations, if a Cal-Am customer invests in certain water conserving improvements, that customer can obtain a "credit" for a portion of the water that is estimated to be conserved by the improvement. That credit can then be used in the future if the customer proposes to modify their property in a way that may increase water consumption. The water credit concept is discussed in State Water Board Order WR 2010-001 and the petitions for reconsideration that gave rise to that Order. It is Cal-Am's contention that Order WR 2010-001 clearly expressed the State Water Board's interpretation of Order WR 2009-0060, to wit that water credits may not be used to serve a new connection or an increased use of water at an existing service address due to a change in zoning or use. Because debate remains regarding this issue, Cal-Am and the MPWMD request the State Water Board to squarely address whether MPWMD water credits may be used to authorize a new connection or an increased use of water at an existing service address.

State Water Board Response: The State Water Board agrees with Cal-Am's contention that water credits may not be used to serve a new connection or an increased use of water at an existing service address due to a change in zoning or use as described above.

### Changes in Water Service Associated with Remodeling Existing Structures

One of the most significant areas of debate is the extent to which the State Water Board's moratorium affects changes in water use attributable to remodeling existing structures. This issue arises in many forms, but the most common issues are:

- the addition of a second bathroom to an existing single family residential structure;
- the addition of a fire service connection due to a remodel, where such connection is required by the Fire Code; and
- the addition of units to an existing structure by subdividing existing units into multiple, smaller units, where a new meter is required for the additional unit(s) under MPWMD rules, but through water conservation devices, no increase in water use is expected.

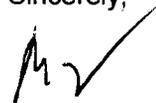
As to the first two instances, Cal-Am contends that whether such a change implicates the moratorium depends on whether the remodel constitutes a "change in zoning or use at an existing service address." If the addition constitutes a "change in zoning or use" under the local land use agency's laws, then the addition is not allowed. If the addition is not a "change in zoning or use" under the local land use agency's laws, then the addition is allowed. We request the State Water Board to confirm that this approach is consistent with the State Water Board's intent. As to the last situation, Cal-Am is unable to ascertain if this constitutes a "new connection" or if the question is whether there is an "increased use of water at an existing service address." This issue is particularly complex within the City of Carmel-By-The-Sea, where there are no street addresses. We request clarification from the State Water Board as to on how to analyze such a situation.

State Water Board Response: The State Water Board agrees with Cal-Am's position that if the addition constitutes a "change in zoning or use" under local land use agency ordinances or MPWMD rules, the addition is not allowed. For locations without a definable service address, the parcel number served at the time of the Order adoption is applicable. If new water meters are added to an existing structure that is subdivided into smaller units, with no additional units and with no change in zoning or use, the installation of additional meters is permissible. (See footnote 47 to Order 2009-0060 where the Board discusses the benefits of additional metering to multi-unit structures.) It is not permitted however, to rely on conservation credits to offset additional water use associated with new units. Such practice would amount to use of conservation credits to serve a new connection and is prohibited.

State Water Board staff is available to meet and discuss the responses provided in this letter. If you have any questions concerning this matter, please contact Mr. John O'Hagan of my staff at (916) 341-5368 or by email at [johagan@waterboards.ca.gov](mailto:johagan@waterboards.ca.gov). Written correspondence should be addressed as follows:

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

Sincerely,



Barbara Evoy, Deputy Director  
Division of Water Rights