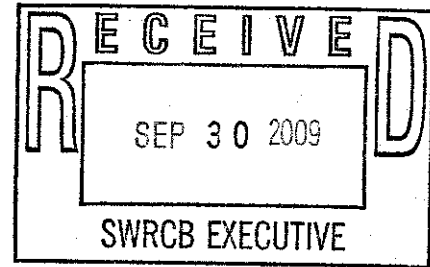


September 29, 2009

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100



Dear Ms. Townsend,

On behalf of the Carmel Innkeepers Association, I would like to register our formal opposition to the California American Water (CAW) Cease and Desist Order (CDO) as it is currently written. Our organization is composed of forty-four inns which account for approximately 950 hotel rooms in Carmel-by-the-Sea. The Transient Occupancy Taxes collected on our behalf contributes to 33% of the City's budget. If SWRCB adopts the CDO, regional economic activity will decline and local tax revenues will drop.

While our organization understands the legal reasoning behind and the environmental need for the CDO, we believe the Board's current draft is intellectually flawed, in that it has provided no significant underlying technical analysis to substantiate whether it is in fact feasible to achieve all the cutbacks set forth in the CDO. Thus, the CDO places a potentially unbearable and financially harmful burden on the business community, beyond what is ethically and legally justifiable. The CDO needs to be rewritten once again to set reasonable and achievable restrictions on future community water use that are in line with State Water Code.

For example, my 37 room hotel used approximately 63 gallons per person per day in Water Year 2009. It is my understanding that the State's legal minimum to sustain public health and safety is set between 55 to 75 gallons per person per day. As you can see, my business is approaching the legal minimum at the current rates of conservation mandated by the Monterey Peninsula Water Management District (MPWMD). Quite obviously people will not rent rooms in areas with severe water restriction which would have a major negative economic impact to our community. Any more than a 13% cut from current per person daily usage rates would result in the Board effectively ordering me to supply my customers less than the minimum amount of water appropriate for human health and safety, as set in State policy. Quite obviously, a CDO that seeks to impose reductions below the minimum daily requirement for human health and safety cannot be deemed legally justifiable nor valid. According to Table 1 of the September 16, 2009 CDO, I would be expected to still operate my business while providing customers less than 55 gallons per person per day by Water Year 2014. Following the intended step downs in Table 1, you would be requiring me to serve my guests with only 51 gallons per day by 2016. A CDO that makes these assumptions is clearly arbitrary and capricious and cannot be legally justified.

It is clear from reading all of the Board's analyses that you failed to consider whether such draconian measures would effectively result in a "taking" of private property, deemed illegal without just compensation according to our constitution. If these cutbacks set unreasonable goals that cannot be achieved without artificially reducing room sales that would result in a business becoming insolvent, how can this not be considered a government taking of private businesses? As I have illustrated above, the Board sets forth in its order a clear expectation that if my business is to implement an equal and proportional share of cutbacks in water allocations, it would result in a requirement for me to operate a business while providing less than the minimum amount of water to my customers that is required for public health and safety.

The CDO also appears to ignore the simultaneous reductions in water supply that are required by the Seaside Groundwater Adjudication which will place progressively severe restrictions on the community concurrent with the duration of the CDO. How can the CDO fail to take those water supply reductions into consideration when evaluating whether its own reductions violate the minimum standards for human health and safety? The CDO seems intellectually and even legally flawed in doing so.

The Board also failed to consider that most of the businesses on the Monterey Peninsula were legally constructed and permitted to operate, in compliance with all of the laws and standards in effect prior to Water Rights Order 95-10. Even agreeing with the environmental purpose of the CDO and that CAW is illegally taking a large fraction of the water it delivers to the community, how can it be deemed appropriate to force pre-existing businesses into fiscal insolvency, in order to punish the private company that was deemed post-facto to have illegally developed a large fraction of its water supply? Why is the regulatory burden not falling solely on the private, for profit water company that has profited from these illegal sales for many years? If my business were deemed by regulatory agencies to have been constructed and continue to operate in violation of State laws, the regulatory burden would be placed on me as the business owner. You would not seek to directly punish my clients. It seems that the same rational needs to be applied in this situation. Peninsula business owners followed the full extent of the law in establishing their businesses and should not now face unreasonable punishments for the actions of a private water company they do not control.

There are aspects of the CDO which the Carmel Innkeepers Association can support. We agree that all of the ASR Phase I water produced should be used to reduce diversions from the Carmel River. We support the Board requiring CAW and MPWMD to develop an ASR Phase II as quickly as possible in the next few years, and that its production should be used to reduce diversions from the Carmel River. We support reductions in Carmel River diversions to the degree that they can be conclusively shown to be offset by additional reasonable conservation measures. We are concerned, however, that the Board assumes more conservation can be achieved than is actually possible, due to the Board failing to thoroughly analyze what is feasible. We agree that 100% of new water supplies from the Sand City desalination plant should be utilized one for one to reduce diversions from the Carmel River.

The Carmel Innkeepers Association also supports either of CAW's proposed projects or the Regional Water Supply Project, whichever option can be brought online first. However, we only support the Regional Project if it remains under the jurisdiction of Monterey Peninsula Water Management District. The community should retain regulatory control over its own water supplies and not be left at the whim of a private water company and a small public water district outside its boundaries.

In summary, the Carmel Innkeepers Association implores the Board to reconsider its CDO and revise it to better reflect minimum daily needs for human health and safety that must be met in order to operate any business serving the public. The Board's CDO must be revised such that it does not threaten financial insolvency for our members in order to achieve the otherwise laudable environmental objective of restoring the Carmel River.

Thank you for your consideration and time.

Sincerely,

Carrie Theis  
President