10/20/09 Bd Mtg
Cal-AM
Deadline: 9/30/09 by 12 noon

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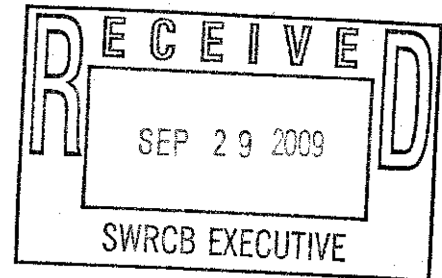


Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
Cal/EPA Headquarters
1001 I Street, 24th Floor
Sacramento, CA 95814-2828

Re: COMMENT LETTER — 10/20/09 BOARD MEETING: CAL-AM CDO

Dear Ms. Townsend:

Thank you for the opportunity to comment on the proposed cease-and-desist order (CDO) against California-American Water Company (Cal-Am). I am a property owner with water rights through the Pebble Beach Company and Cal-Am, and I incorporate by reference the briefs and comments of those parties.

I write to object to the proposed order, and in particular the refusal to exclude the 365 afa Pebble Beach Company entitlement from the CDO's proposed limits on Cal-Am—which are themselves unsound and poorly timed. The Public Utilities Commission (PUC) has explained that the unnecessary disruption resulting from the CDO disserves several public policy considerations that as a matter of equity should not be subordinated to a restrictive and hyperregulatory view of the public trust doctrine. The refusal to exclude the Pebble Beach Company entitlement from the proposed restrictions will subject the Board to substantial litigation risk because it would effect a taking of the property rights of Cal-Am, the Pebble Beach Company, and the property owners who have contracted with them.

It is wholly inappropriate for the Board effectively to reimpose a construction moratorium in P ebble Beach notwithstanding the demonstrated and successful commitment of the Pebble Beach Company and Cal-Am to reduce consumption and to develop additional water sources. That is particularly so in light of the substantial actions taken by the Pebble Beach Company and property owners within Pebble Beach in reliance on the Board's prior representations and assurances. The proposed CDO not only would prompt substantial and justified litigation, but would provide strong disincentives for others within water-constrained areas to invest in similar reclamation or conservation projects. The Pebble Beach Company and the property owners who funded its project provided a disproportionate conservation benefit to the Carmel River Basin. The relatively small amount of water at issue in the Pebble Beach Company entitlement further weighs against application of the CDO to deprive the Pebble Beach

Company of the benefits of its conservation and reclamation efforts, and Pebble Beach property owners of the benefits for which their underwriting of those efforts paid.

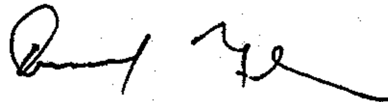
The proposed CDO takes Cal-Am to task for the delay in finding a comprehensive solution. As the Board is well aware, however, political rather than practical obstacles prevented Cal-Am from obtaining the needed water from the New Los Padres and Carmel Dam Projects. When the necessary bond issue for Los Padres was defeated in 1995, Cal-Am promptly pursued the Dam Project. But it was AB 1182 (1998), not Cal-Am, that forced years of further delay. When the PUC in 2002 advanced the Coastal Water Project as the principal alternative to the Dam Project, Cal-Am requested that the PUC proceed with that more environmentally sensitive alternative. The PUC did not issue a draft EIR on the Coastal Water Project until earlier this year. That delay is not Cal-Am's fault—much less the fault of the Pebble Beach Company or the property owners and residents who depend on Cal-Am's diversions.

But in the face of the imminent issuance of the final EIR for the Coastal Water Project, which would allow that project finally to go forward, the Board now moves to disrupt the water supply of Cal-Am and its customers. Indeed, the PUC has informed the Board that the relevant process is scheduled to conclude next May—only a few months from now. As the PUC observed, the Board's action would thwart a years-long collaborative process that is on the verge of delivering a permanent solution, in an apparent effort to punish Cal-Am, the Pebble Beach Company, and hundreds of property owners.

The timing of the Board's proposed CDO is suspect. The rush to enter a CDO now, rather than waiting for the conclusion of the long process shepherded by the PUC, appears to reflect an arbitrary and capricious desire to exert regulatory power—at maximum public inconvenience, maximum threat to the public health and safety, and maximum cost to property owners—during a narrow window of opportunity. The likely implementation of a permanent solution to the water constraints in the Carmel River Basin would preclude the possibility that such draconian regulatory action could be sustained even briefly. The Board should not enter a CDO that, as the PUC has explained, is both unnecessary and deeply counterproductive.

Finally, it is fundamentally unfair for the Board to condemn Cal-Am for failing to develop sufficient new water sources when much if not all the delay results from obstructionist tactics by the same special interests that now urge adoption of the CDO.

Very truly yours,



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