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Jeffery R. Gilles



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Of Counsel
E. Soren Diaz
Virginia A. Hines

File No. 04116.000

November 19, 2009

VIA E-MAIL & U.S. MAIL

Mr. Paul Murphy
Hearings Unit, Division of Water Rights
State Water Resources Control Board
Cal/EPA Headquarters
1001 I Street, 2nd Floor
Sacramento, CA 95814-2828

Re: Petition for Reconsideration – SWRCB Order WR 2009-0060

Dear Mr. Murphy:

On behalf of our client, CVR HSGE, LLC, we submit the enclosed Petition for Reconsideration of SWRCB Order WR 2009-0060. As noted on the Proof of Service that is attached to the Petition, our office has served copies of the Petition to all of the “interested parties” listed on the “California American Water Cease and Desist Order Service List.”

Respectfully submitted,

Lombardo & Gilles, LLP

A handwritten signature in black ink, appearing to be "JSR".

Jason S. Retterer

JSR:ncs

Enclosures

1 ANTHONY L. LOMBARDO, Esq. #104650
JASON S. RETTERER, Esq. #194651
2 LOMBARDO & GILLES, LLP
318 Cayuga Street
3 Salinas, California 93901
Telephone: 831.754.2444
4 Facsimile: 831.754.2011
5 Attorneys for Petitioner, CVR HSGE, LLC

6 **STATE OF CALIFORNIA**

7
8 **BEFORE THE STATE WATER RESOURCES CONTROL BOARD**

9 **IN THE MATTER OF CALIFORNIA**
10 **AMERICAN WATER COMPANY**
11 **CEASE & DESIST ORDER WR 2009-**
0060

Petition For Reconsideration

12
13 **I. Introduction**

14 Petitioner, CVR HSGE, LLC ("CVR"), One Old Ranch Road Carmel, CA 93923, is
15 the owner and operator of Carmel Valley Ranch in Carmel Valley, California (the "Ranch").
16 The Ranch is located on Carmel Valley Road in unincorporated Monterey County and within
17 the jurisdictional boundaries of the Monterey Peninsula Water Management District
18 ("MPWMD"). The Ranch currently receives water from the California-American Water
19 Company ("Cal-Am").

20 CVR petitions the State Water Resources Control Board ("SWRCB") for reconsideration
21 of Order WR 2009-0060 ("Order"), which the SWRCB adopted on October 20, 2009. The Order
22 requires Cal-Am to cease and desist from the unauthorized diversion of water from the Carmel
23 River in accordance with the schedule and conditions set forth in the Order. CVR requests that
24 the SWRCB reconsider the Order, specifically Condition No. 2 of the Order, which, as drafted,
25 will effectively extinguish CVR's previously approved and vested water entitlements.

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II. Background

The Ranch is the beneficiary of a previously approved and unused water allocation for an approved, but un-built residential subdivision, a water credit based on its undertaking of significant and voluntary water conservation efforts. On December 19, 2006, the Monterey County Board of Supervisors approved a vesting tentative map to subdivide a 218-acre parcel into twelve lots. As documented in the initial study that was prepared for the subdivision, potable water for the subdivision would be provided from an existing water allocation of 8.807 AFA which was the result of a previously approved, but undeveloped 25-unit subdivision at the Ranch. In 2008, the Monterey County Water Resources Agency confirmed that this allocation remained available for the subdivision. *Exhibit A.*

In addition and in accordance with MPWMD Rule 25.5,¹ in 2006, MPWMD approved a water credit to the Ranch based on its voluntary removal of approximately 6,000 square feet of landscaped area, implementation of a new irrigation system and permanent recorded restrictions on future landscaping. Collectively, these measures resulted in a water savings and corresponding water credit of 7.245 AFA. *Exhibit B.* The Ranch also removed twenty-four spas from hotel rooms and performed extensive toilet retrofitting at the hotel, which resulted in an additional water savings and corresponding water credits.

On September 30, 2009, in response to the revised draft Order, CVR's representative submitted a comment letter requesting that SWRCB revise the CDO to recognize the ongoing availability of existing but unused water allocations and water credits to serve new connections or increase water service at existing service connections. *Exhibit C.* This request was based

¹ Rule 25.5 establishes rules and regulations that govern the issuance of water credits. Among other sections, subsection (a) provides that: "Except where a Water Permit has been abandoned, expired, Revoked, suspended, or canceled under these Rules, a Person may receive a Water Use Credit for the permanent abandonment of some or all of the prior water use on that Site by one of the methods set forth in this Rule. Water Use Credits shall be documented by written correspondence between the District and the property owner, and shall remain valid unless prohibited by this Rule. Water Use Credits shall not be documented by notice on a property title, except as specified in Rule 25.5-G. Except as allowed by Rule 28, Water Use Credits shall not be transferable to any other Site."

1 on the significant time, expense and planning that CVR and other similarly situated property
2 owners have undertaken to obtain water credits and allocations to ensure the long term success
3 of their businesses. Notwithstanding this letter and other letters expressing similar concerns,
4 the Order continues to fail to recognize lawfully issued and vested water entitlements as a valid
5 basis for future service connection.

6 **III. Grounds for Reconsideration**

7 **A. The Order Improperly Deprives CVR of Its Vested Water Entitlements**

8 The Order commands Cal-Am to cease and desist from the unlawful diversion of water
9 from the Carmel River in accordance with a water reduction schedule and numerous
10 conditions. Among other conditions, Condition No. 2 states:

11 Cal-Am shall not divert water from the Carmel River for new service
12 connections or for any increased use of water at existing service addresses
13 resulting from a change in zoning or use. Cal-Am may supply water from the
14 river for new service connections or for any increased use at existing service
15 addresses resulting from a change in zoning or use after October 20, 2009
16 provided that any such service had obtained all necessary written approvals
17 required for project construction and connection to Cal-Am's water system prior
18 to that date.

17 This condition is inappropriate, improper and illegal because it prevents CVR and other
18 property owners who have obtained vested water entitlements from obtaining new service
19 connections from Cal-Am. CVR, like other property owners within Cal-Am's service area,
20 has performed substantial work and incurred substantial liabilities in good faith reliance on the
21 rules and regulations of the MPWMD and representations from MPWMD staff to establish
22 water credits and water allocations for future use. At a significant expense, CVR voluntarily
23 pursued an extensive retrofitting of the golf course irrigation system in the late 1980s to ensure
24 that sufficient water credits and water supplies would be available to meet the future needs of
25 CVR. CVR, in reliance on this regulatory framework, spent the money, took action to reduce
26 water consumption and was granted a water credit.

1 These water entitlements are documented and memorialized in the MPWMD resolution
2 conditionally approving annexation of the subdivision into Cal-Am service territory in the
3 context of more recently issued water credits, “Notice(s) of Deed Restriction Regarding
4 Limitation of Use of Water on Property” that are required to be recorded on the property pursuant
5 to MPWMD Rule 25.5 (G)(2)². The Deed Restrictions are executed by the property owner and
6 MPWMD and set forth the rights and obligations of the parties as to the water entitlement. The
7 Order’s prohibition on new service connections interferes with these contractual vested water
8 rights.

9 **B. The Order Fails to Properly Balance the Interests of the Community**

10 The SWRCB has an obligation to balance the various interests of the community when
11 determining the most appropriate means to protect the public trust. *National Audubon Society v.*
12 *Superior Court of Alpine County* (1983) 33 Cal.3d 419, 447. These interests necessarily must
13 include CVR and the hospitality industry in general, which is a vital component of the local
14 economy and is presently suffering from ongoing economic decline. In order for the Ranch and
15 the industry to remain competitive, it is essential that these water entitlements remain available
16 for future use. In this case, the Order’s prohibition of new service connections demonstrates that
17 there was no balancing of the interests or any consideration whatsoever of the economic
18 consequences of the Order on CVR and the hospitality industry of the Central Coast. This failure
19 to balance occurred notwithstanding evidence in the record regarding the adverse consequences
20 of the Order on the hospitality industry. *Exhibit D.*

21 The SWRCB’s failure to conduct the required balancing will severely and unjustly affect
22 the long term viability of CVR and other property owners who have acted responsibly and within
23 the parameter of the law. While the SWRCB appears to have undertaken this type of balancing
24 to exclude the Pebble Beach Company (“PBC”) water entitlement from the new connection
25 prohibition, the Order inexplicably fails to extend the same type of balancing to other parties who

26
27 ² Rule 25.5(G)(2) provides: “Use of a documented water credit to offset an expansion of use shall cause
28 recordation of a Notice and Deed Restriction regarding limitation on use of water on property.”

1 have obtained similar water entitlements. This balancing should apply with equal vigor to CVR
2 and other property owners who have acted responsibly and in reliance on the assurances provided
3 by local rules and regulations and the regulators.

4 **C. The Order's Recognition of Some Water Credits, But Not Others, Is Arbitrary and**
5 **Capricious**

6 The Order properly recognizes PBC's 365 AFA water entitlement based on its
7 significant investment in the wastewater reclamation project, which reduced its overall demand
8 on Cal-Am or Carmel River water. By recognizing PBC's entitlement, the Order implicitly
9 found that such an exemption would not have an adverse impact on fish, wildlife and the
10 riparian habitat of the Carmel River. The same rationale should be applied to other property
11 owners who have made significant investments to reduce their demand on Cal-Am water in
12 exchange for MPWMD's approval of a water entitlement for the property. Like the efforts
13 undertaken by PBC, the Ranch implemented measures to reduce its overall water demand in
14 order to secure water credits for future use on the property. Any future use of this previously
15 approved water credits, which is based on water historically consumed on the property, would
16 not result in any increase in illegal diversions of the Carmel River. The Order's unique
17 treatment of the PBC entitlement and its failure to recognize and exempt the water credits
18 obtained by the Ranch and other property owners is arbitrary and capricious and an abuse of
19 discretion.


20 **IV. Conclusion**

21 CVR, in good-faith reliance on MPWMD rules and regulations authorizing water credits,
22 made significant investments in water conservation measures to obtain the water allocations and
23 water credits that are presently available to serve the property. The Order's ban on new service
24 connections improperly and unlawfully deprives CVR of these vested water entitlements.
25 Accordingly, CVR respectfully requests that the SWRCB conduct the required balancing of
26 interests required under *National Audubon Society* and reconsider and modify the Order to
27 exempt new connections or intensification of water use that are based on MPWMD-approved
28

1 water allocations or water credits from the new connection prohibition set forth in Condition No.
2 of the Order.

3 Dated: November 19, 2009

LOMBARDO & GILLES, LLP

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5 By: 
6 Jason S. Retterer
7 Attorney for CVR HSGE, LLC
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1 **PROOF OF SERVICE**

2 I am employed in the County of Monterey, State of California. I am over the age of eighteen
3 years and not a party to the within action. My business address is 318 Cayuga Street, Salinas,
4 California 93901.

4 On the date set forth below, I caused the following document(s) entitled:

5 **PETITION FOR RECONSIDERATION**

6 to be served on the party(ies) or its (their) attorney(s) of record in this action listed below by the
7 following means:

8 X	BY MAIL. By placing each envelope (with postage affixed thereto) in the U.S. Mail at the law offices of Lombardo & Gilles, 318 Cayuga Street, Salinas, California , addressed to City of Carmel-by-the-Sea; Donald G. Freeman; P. O. Box CC; Carmel-by-the-Sea, CA 93921. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and in the ordinary course of business, correspondence would be deposited with the U.S. Postal Service the same day it was placed for collection and processing.
12	BY HAND-DELIVERY. By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the parties listed below.
14	BY OVERNIGHT DELIVERY. By placing with an overnight mail company for delivery a true copy thereof, enclosed in a sealed envelope, with delivery charges to be billed to Lombardo & Gilles, addressed as shown below.
16	BY FACSIMILE TRANSMISSION. By transmitting a true copy thereof by facsimile transmission from facsimile number (831) 754-2011 to the interested party(ies) or their attorney(s) of record to said action at the facsimile number(s) shown below.
18 X	BY ELECTRONIC MAIL. By transmitting a true copy thereof by electronic mail from e-mail address nancy@lomgil.com to Mr. Paul Murphey at the State Water Resources Control Board and to the interested parties or their attorney(s) of record to said action at the electronic mail addresses in the attached list.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is
21 true and correct.

22 Executed on November 19, 2009, at Salinas, California.

23 
24 Nancy Stafford

CALIFORNIA AMERICAN WATER CEASE AND DESIST ORDER
SERVICE LIST

Service by Electronic Mail

California American Water
Jon D. Rubin
Diepenbrock Harrison
400 Capitol Mall, Suite 1800
Sacramento, CA 95814
(916) 492-5000
jrubin@diepenbrock.com

State Water Resources Control Board
Reed Sato
Water Rights Prosecution Team
1001 I Street
Sacramento, CA 95814
(916) 341-5889
rsato@waterboards.ca.gov

Public Trust Alliance
Michael Warburton
Resource Renewal Institute
Room 290, Building D
Fort Mason Center
San Francisco, CA 94123
Michael@rri.org

Sierra Club – Ventana Chapter
Laurens Silver
California Environmental Law Project
P.O. Box 667
Mill Valley, CA 94942
(415) 383-7734
larrysilver@earthlink.net
jgwill@dcn.davis.ca.us

Carmel River Steelhead Association
Michael B. Jackson
P.O. Box 207
Quincy, CA 95971
(530) 283-1007
mjatty@sbcglobal.net

Calif. Sportfishing Protection Alliance
Michael B. Jackson
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(530) 283-1007
mjatty@sbcglobal.net

City of Seaside
Russell M. McGlothlin
Brownstein, Hyatt, Farber, Schreck
21 East Carrillo Street
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RMcGlothlin@BHFS.com

The Seaside Basin Watermaster
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21 East Carrillo Street
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RMcGlothlin@BHFS.com

Monterey Peninsula Water

City of Sand City

Management District
David C. Laredo
606 Forest Avenue
Pacific Grove, CA 93950
(831) 646-1502
dave@laredolaw.net

James G. Heisinger, Jr.
Heisinger, Buck & Morris
P.O. Box 5427
Carmel, CA 93921
(831) 624-3891
jim@carmellaw.com

Pebble Beach Company
Thomas H. Jamison
Fenton & Keller
P.O. Box 791
Monterey, CA 93942-0791
(831) 373-1241
TJamison@FentonKeller.com

City of Monterey
Fred Meurer, City Manager
Colton Hall
Monterey, CA 93940
(831) 646-3886
meurer@ci.monterey.ca.us

Monterey County Hospitality
Association
Bob McKenzie
P.O. Box 223542
Carmel, CA 93922
(831) 626-8636
info@mcha.net
bobmac@qwest.net

California Salmon and Steelhead
Association
Bob Baiocchi
P.O. Box 1790
Graeagle, CA 96103
(530) 836-1115
rbaocchi@gotsky.com

Planning and Conservation League
Jonas Minton
1107 9th Street, Suite 360
Sacramento, CA 95814
(916) 719-4049
jminton@pcl.org

National Marine Fisheries Service
Christopher Keifer
501 W. Ocean Blvd., Suite 4470
Long Beach, CA 90802
(562) 950-4076
christopher.keifer@noaa.gov

Division of Ratepayer Advocates
Max Gomberg, Lead Analyst
505 Van Ness Avenue
San Francisco, CA 94102
(415) 703-2056
eau@cpuc.ca.gov

City of Seaside
c/o Rick Medina
440 Harcourt Avenue
Seaside, CA 93955
(831) 899-6726
rmedina@ci.seaside.ca.us

Pebble Beach Company
Kevin O'Brien
Downy Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
(916) 444-1000
kobrien@downeybrand.com

Carmel River Steelhead Association
Brian Leneve
P.O. Box 1021
Carmel, CA 93921
(831) 624-8497
bjleneve@att.net

Service by Mail

City of Carmel-by-the-Sea
Donald G. Freeman
P.O. Box CC
Carmel-by-the-Sea, CA 93921
(831) 624-5339 ext. 11

MONTEREY COUNTY



WATER RESOURCES AGENCY

PO BOX 930
SALINAS, CA 93902
(831) 755-4860
FAX (831) 424-7935

CURTIS V. WEEKS
GENERAL MANAGER

STREET ADDRESS
893 BLANCO CIRCLE
SALINAS, CA 93901-4455

January 30, 2008

Dennis Beougher
Lombardo & Gilles, LLP
318 Cayuga St.
Salinas, CA 93901

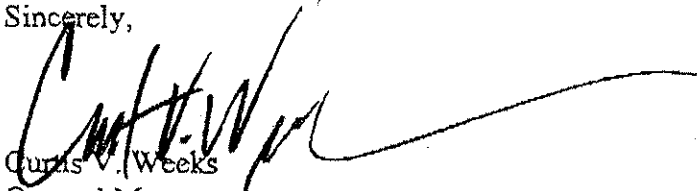
RE: Carmel Valley Ranch Water Allocation; PLN 020280

Dear Mr. Beougher:

The Monterey County Water Resources Agency (Agency) continues to hold 8.807 acre feet of water for the proposed 12-lot subdivision at Carmel Valley Ranch. As you are aware, the Agency does not track actual water use upon buildout.

If you have any questions, please do not hesitate to call.

Sincerely,


Curtis V. Weeks
General Manager

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EXHIBIT A



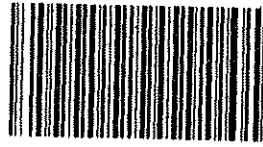
**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

5 HARRIS COURT, BLDG. G
POST OFFICE BOX 85
MONTEREY, CA 93942-0085 • (831) 658-5601
FAX (831) 644-9560 • <http://www.mpwmd.dst.ca.us>

Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Filer

CRSUSY
7/09/2009
11:48:16

DOCUMENT: **2009043089**



Titles: 1/ Pages: 9
Fees 34.00
Taxes
Other 2.00
AMT PAID \$36.00

Recording Requested by:
Monterey Peninsula Water Management District

And When Recorded Mail To:
Monterey Peninsula Water Management District
Post Office Box 85
Monterey, California 93942-0085

**NOTICE AND DEED RESTRICTION
REGARDING LIMITATION ON USE
OF WATER ON A PROPERTY**

NOTICE IS GIVEN that the Monterey Peninsula Water Management District (hereinafter referred to as the Water Management District), duly formed as a water district and public entity pursuant to the provisions of law found at Statutes of 1977, Chapter 527, as amended (found at West's California Water Code Appendix, Chapters 118-1 to 118-901), has approved water service to the real property referenced below as "Subject Property".

NOTICE IS FURTHER GIVEN that the real property affected by this agreement is situated in the **County of Monterey:**

**ONE OLD RANCH ROAD, CARMEL VALLEY, CA 93924
(CARMEL VALLEY RANCH SPECIFIC PLAN PARCELS TRACT NO 949 LOT 10 30.796 AC)
ASSESSOR'S PARCEL NUMBER 416-522-010-000**

This real property is hereinafter referred to as the "Subject Property." The Subject Property is located within the jurisdiction of the Water Management District. **Carmel Valley Mortgage Borrower L.L.C, a Delaware Limited Liability Company**, (hereinafter referred to as "Owner(s)"), is record Owner(s) of the Subject Property.

Owner(s) and the Water Management District each acknowledge and agree that the Subject Property shall be considered as meeting the specific Conditions of Approval dated **October 19, 2006** which are attached hereto and made a part hereof. This is a permanent requirement of the Subject Property.

Owner(s) and the Water Management District each acknowledge and agree that the landscaping water use at the Subject Property is limited and shall consist of:

EXHIBIT B

- Proper design, installation and maintenance of a new irrigation system.
- Proper hydro-zoning of plants; grouping plant varieties together with other plants with similar water needs.
- Installation and permanent use of a real-time, weather-based irrigation controller serving all irrigated areas.
- There shall be a dedicated water meter(s) for all landscape irrigation.
- Generous use of mulch throughout the landscaped areas.
- No new additions of landscaped area.
- No addition of plants having a higher species coefficient than 2.0.
- The property owner shall implement a water education program for landscapers, gardeners and other employees who maintain or care for landscaping, including education about the District's water waste restrictions and clear direction that all irrigation to landscaping approved as a result of this credit request is to be done using the installed irrigation system and not by hand watering.
- The property owner shall implement a permanent training program on the proper use of the real-time weather-based irrigation controller for all employees who maintain the landscaping.
- Landscape (Group IV) Modified Non-Residential Use (per Rule 24, Table 2) as shown on landscape plans dated January 8, 2006

NOTICE IS FURTHER GIVEN that this agreement is binding and has been voluntarily entered into by Owner(s), and each of them, and constitutes a mandatory condition precedent to receipt of regulatory approval from the Water Management District relating to the Subject Property. This agreement attaches to the land and shall bind any tenant, successor or assignee of Owner(s).

NOTICE IS FURTHER GIVEN that present and/or future use of water at the Subject Property site is restricted by Water Management District Rules and Regulations to the water use requirements referenced above. Any modification to a water use connection as set forth in District Rule 20-B will require prior written authorization and Permit from the Water Management District. Approval may be withheld by the Water Management District, in accord with then applicable provisions of law. Present or future Allocations of water may not be available to grant any Permit to Intensify Water Use at this site. If any request to Intensify Water Use on the Subject Property is approved, Connection Charges and other administrative fees may be required as a condition of approval.

NOTICE IS FURTHER GIVEN that modification or Intensification of Water Use on the Subject Property that occurs without the advance written approval of the Water Management District is a violation of Water Management District Rules and may result in a monetary penalty for each offense as allowed by Water Management District Rules. Each separate day, or portion thereof, during which any violation occurs or continues without a good faith effort by the Responsible Party to correct the violation shall be deemed to constitute a separate offense. All Water Users within the jurisdiction of the Water Management District are subject to the Water Management District Rules, including Rules 11, 20, 21, 23, 24, and 148.

The Owner(s) and the Water Management District each intend that this Notice and Deed Restriction act as a deed restriction upon the Subject Property, and that it shall be irrevocable under its terms. This document shall be enforceable by the Water Management District or any public entity that is a successor to the Water Management District.

The Owner(s) elects and irrevocably covenants with the District to abide by the Conditions of Approval which are attached hereto and made a part hereof and by this Notice and Deed Restriction. But for the limitations and notices set forth herein, **approval of this Water Use Credit** would otherwise be withheld and found to be inconsistent with the Water Management District Rules and Regulations.

This Notice and Deed Restriction is placed upon the Subject Property. Any transfer of this property, or an interest therein, is subject to this deed restriction. This Notice and Deed Restriction shall have no termination date unless amended by the filing of a less restrictive deed restriction.

If any provision of this Notice and Deed Restriction is held to be invalid, or for any reason becomes unenforceable, no other provision shall thereby be affected or impaired.


The undersigned Owner(s) agrees with and accepts all terms of this document stated above, and requests and consents to recordation of this Notice and Deed Restriction Regarding Limitation on Use of Water on a Property. The Owner(s) further agrees to notify any present and future tenant of the Subject Property of the terms and conditions of this document.

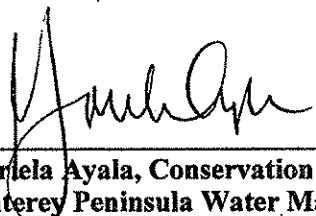
OWNER(S) agrees to recordation this Notice and Deed Restriction in the Recorder's Office for the County of Monterey. Owner(s) further unconditionally accepts the terms and conditions stated above.

(Signatures must be notarized).

**Carmel Valley Mortgage Borrower L.L.C.,
a Delaware Limited Liability Company**

**By: Carmel Valley Mezz 1 LLC,
a Delaware Limited Liability Company, Sole Member**

By:  Dated: 6/12/09
Kenneth A. Caplan, Senior Managing Director and Vice President

By:  Dated: 7.9.09
**Gabriela Ayala, Conservation Representative
Monterey Peninsula Water Management District**

Attached: Conditions of Approval



**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

5 HARRIS COURT, BLDG. G
POST OFFICE BOX 85
MONTEREY, CA 93942-0085 • (831) 658-5601
FAX (831) 644-9558 • <http://www.mpwmd.dst.ca.us>

October 19, 2006

Miriam Schakat, Esquire
Lombardo & Gilles
Post Office Box 2119
Salinas, California 93902-2119

Subject: Water Use Credit Application for Carmel Valley Ranch (APN 416-422-010 and 416-529-023)

Dear Miriam:

This letter responds to a Water Use Credit request for removal of irrigated landscaping around the lodge and hotel units at Carmel Valley Ranch, Carmel Valley. This letter also addresses a request for Water Use Credits for installation of toilets using a maximum of one gallon per flush in the 144 resort lodge rooms, and several other issues related to compliance with District regulations at Carmel Valley Ranch.

Landscaping

To determine the potential water credit for landscape removal, the District staff agreed to review the water needs of the existing landscaping against the water needs of proposed landscaping. Ideally, the District staff wanted to review the original landscape and irrigation plans. It is our understanding that the original plans could not be located. Instead, drawings of the existing landscaping were prepared and compared against a landscape plan for the proposed project. You submitted water budgets for the existing and proposed landscaping completed by Landscape Architect Michael Bellinger.

District staff member Rob Cline, a Certified Landscape Irrigation Auditor, reviewed the landscape plans and the water use calculations provided. Rob also visited the site with you and the head groundskeeper to examine the existing landscaping. Based on his review of documents you submitted and site observations, Rob has recommended using an average plant species coefficient of 0.5 (0.1 being very low water needs, 1.0 being very high) in calculating the current and proposed applied water estimates. It is also his professional opinion that it is not appropriate to adjust the microclimate factor or density factor (two other derivatives of the landscape coefficient), as these factors vary considerably by season and maintenance practices. Finally, Rob has indicated that use of the Maximum Applied Water Allowance (MAWA) is inappropriate for existing landscaping. Therefore, this response was prepared using the Estimated Applied Water (EAW) for both the existing and proposed conditions, which is a more accurate long-term representation of water use following establishment. It should also be noted

that the annual Average Reference Evapotranspiration (ET_o) for this site is 46.3 inches (i.e. ET_o Zone 3, coastal valleys and plains and north coast mountains), rather than 48.5 inches (CIMIS data from a station in the more arid Arroyo Seco region) as Mr. Bellinger used on the water calculations shown on the plans. The average annual rainfall for the Monterey region is 19.62 inches. Rainfall at Carmel Valley Ranch area is approximately one to two inches higher. The District staff's calculations reflect the information contained in this paragraph. Rob's detailed analysis is available upon request.

The landscape plans submitted to the District in September 2006 indicate that there will be a reduction of 5,591 square-feet of landscaped area. Using the prescribed method of the State Model Landscape Ordinance (and the information provided in the previous paragraph) to determine the EAW for the existing and proposed landscaping, District staff calculated:

Existing EAW = 3,071,175.8 gallons annually or 9.425 AFA

Proposed EAW = 2,973,329.9 gallons annually or 9.125 AFA

These numbers reflect the average coefficient. However, by improving the efficiency of the landscaping, it is possible to considerably reduce water use and reduce the coefficient. To achieve this as a permanent reduction in use as required by District Rule 25.5, the following conditions will be required, and a lower plant species factor will be applied to the proposed project's water use calculations, achieving an EAW of 2.18 AFA. The difference between existing EAW (9.925 AFA) and the reduced demand EAW of 2.18 AFA represents a savings of approximately 7.245 AFA. To achieve this reduction, the following District Water Use Credit approval conditions will be required:

1. Proper design, installation and maintenance of a new irrigation system.
2. Proper hydro-zoning of plants; grouping plant varieties together with other plants with similar water needs.
3. Installation and permanent use of a real-time, weather-based irrigation controller serving all irrigated areas. *Note: The requirement for "real-time" weather data controller is a key component in this approval. District staff is available to verify that the proposed controller meets this requirement.*
4. There shall be a dedicated water meter(s) for all landscape irrigation. *The District understands that there are at least five water meters serving the Lodge Resort parcel. Prior to issuance of a water credit, provide the District with information for each meter, including the location of the meter, the specific uses and location of the uses on that meter.*
5. Generous use of mulch throughout the landscaped areas.
6. No new additions of landscaped area.
7. No addition of plants having a higher species coefficient than 2.0. *Prior to issuance of a water credit, provide the District with a complete list of plant names, photos and documentation that they meet the maximum 2.0 coefficient standard.*
8. The property owner shall implement a water education program for landscapers, gardeners and other employees who maintain or care for landscaping, including education about the District's

water waste restrictions and clear direction that all irrigation to landscaping approved as a result of this credit request is to be done using the installed irrigation system and not by hand watering.

9. The property owner shall implement a permanent training program on the proper use of the real-time weather-based irrigation controller for all employees who maintain the landscaping.

In addition, the District will record the following three deed restrictions on the property:

1. Notice and Covenant Regarding Limitation on Use of Water on a Property. This document will list the specific conditions related to the proposed landscape credit as discussed in the previous bullet points.
2. Notice and Covenant to Provide Public Access to Water Use Data. This document provides authorization to retrieve, collect, compile and report actual water use data for a specific property. Obtaining this authorization releases the District from the restrictions of the Non-Disclosure Agreement between the District and California-American Water Company (Cal-Am).
3. Notice and Covenant of a Modified Non-Residential Water Use. This document provides notice that the user has a reduced water capacity that resulted in documentation of a Water Use Credit and that the user is hereafter identified as a Non-Residential Group IV on the District's Table 2: Non-Residential Water Use Factors.

Please notify the District in writing if your client accepts or disagrees with this proposed credit and conditions. If your client agrees with the District staff's analysis and proposed Water Use Credit, your letter should also withdraw your appeal of the General Manager's May 26, 2006 denial of credit, as the issue would be moot. If you disagree with our analysis, please provide substantial written comments to explain your position. Please provide written responses to the questions asked in this letter prior to the final issuance of a Water Use Credit. A final Water Use Credit will be issued following receipt of a completed Water Use Credit Application for this request, completion of the landscaping as reflected in the Carmel Valley Ranch landscape plans dated August 28, 2006, and following recordation of the appropriate deed restrictions and verification of compliance with the conditions of approval listed in this letter. Any modification to these plans will void the current analysis. This District analysis is time-sensitive, therefore District staff reserves the right to alter its conclusion based on changed conditions if the proposed retrofitting is not undertaken within the next six months.

Hotel Room Toilet Retrofit

The District also received your request to review a proposed Water Use Credit for permanently replacing 1.6 gallons-per-flush (gpf) toilets in the 144 lodge rooms with 1.0 gpf toilets. Your consultant, Roger Fry, of Camp Dresser McKee, responded with his conclusion that water savings of 0.95 AFA could be achieved. His analysis was based on 14 flushes per day (7 flushes per day, per person x 2 people per room) as the average number of hotel room toilet flushes. He supported this number by backing out sewage flow as estimated in Monterey County Zoning Ordinance, Title 15. He also references a study done for the City of Santa Barbara that broke down interior use and the percentage of interior use by toilets. The Santa Barbara study was done in the early 1980's and is considered by District staff to be obsolete as the work pre-dates the installation of water-saving technology.

District staff pursued verification of the "flush per day" theory. The number of visitors per hotel room probably averages less than 2 per night, although it was not possible to find a standard number in the sources reviewed by staff. In the City of San Francisco, the average is 1.77 persons per room per night (San Francisco Convention and Visitors Bureau, 2005). Further information on the average number of guests per room is needed to complete this water savings estimate. Average annual room occupancy at the Ranch should also be factored into the savings estimate. Please provide these numbers to the District (along with supporting documentation), and the water credit will be calculated using the savings per flush (0.6 gpf) at 7 flushes per guest per day, adjusted for occupancy.

A Water Use Credit for permanently retrofitting from 1.6 gpf to 1.0 gpf will require the recordation of the same deed restrictions discussed under the landscaping heading. In addition, please submit a completed Water Use Credit Application for this request.

Carmel Valley Ranch Water Permit

The water permit issued for construction of the Lodge Resort (#5969) was issued on July 7, 1986 for 23.011 acre-feet of water. This included 100 hotel rooms and 125 restaurant seats. Landscaping was not given a separate calculation, but was considered an "associated use" and was included in the hotel and restaurant factors. The pools, spas and retail uses were not included on the original or subsequent water permits. This last fact appears to have been caused by District staff error, thereby not requiring adjustment at this time. A water permit was issued in 1997 for 44 new hotel rooms, bringing the total to 144. No other water permits for intensifications in use have been issued.

As part of the review process for the requested water credits, District staff reviewed the original construction drawings against the existing conditions. It was during this review that the discrepancy in the pools and spas was noted. One other discrepancy was noted: The Lodge Resort restaurant seating has increased since the original water permit was issued in 1986. According to the September 20, 2006 inspection conducted by District staff, the number of restaurant/bar seats in the lodge totaled 141. Therefore, a water permit is required for the additional seating. Please obtain a water permit for 16 restaurant seats on the Lodge parcel. A water credit (or County allocation debit) in the amount of 0.32 AFA is needed to permit this use. An alternative variable to you would be to offset this 0.32 AFA against the proposed landscape water credit, yielding a net landscape water credit of 6.925 AFA.

Golf Clubhouse

A similar situation was noted at the Golf Clubhouse. The District was asked to review the plans for an interior remodel. In doing so, the District reviewed records from the Monterey County Environmental Health Department to determine the appropriate number of restaurant/bar seats. The County's Health Department Permit No. FA0811477 allows between 50 and 149 seats. The information submitted by your office indicated that the existing seating was 180, and that the seating will be reduced to 145 in the dining area with occupancy of 65 in the member lounge. Your estimate did not count the member lounge seats as restaurant seats, as they should be. Therefore, the Clubhouse must either reduce its total number of seats to a maximum of 149, in keeping with the Health Department permit, or you need to obtain a water permit for the additional seating.

Miriam Schakat
CV Ranch, October 19, 2006
Page 5

Please apply for a water permit for the additional seating or reduce the seating to comply with the Health Department permit. As the construction of the Clubhouse predates the District's permit process, the District is relying on the seating count permitted by the County as the baseline for determining future permit requirements.

Documentation of Credit

Documentation of Water Use Credits will be granted following verification that the conditions associated with each retrofit have been met and that the Lodge Resort is in compliance with all District requirements. As a result of the District's inspections, the following items were noted as being out of compliance with District law:

1. Water conservation signs must be posted in all restrooms and kitchen areas;
2. Three handicapped-height toilets in the public restrooms are not designed to flush with 1.6 gpf. These toilets must be replaced and reinspected.

Please contact the District for an inspection upon completion of the permanent reductions in use and as the noncompliant items are addressed. Prior to issuing any Water Use Credit, the District will require recordation of the noted deed restrictions on the title of the property. Staff will require several documents to prepare the deed restrictions. Please provide copies of Articles of Incorporation (i.e. operating agreement), and Restated Bylaws, and Resolution of the Board of Directors for Carmel Valley Mortgage Borrower L.L.C. The deed restrictions must be signed, notarized, and returned to the District for recordation with Monterey County Recorder's Office. Legal review and recordation fees will need to be collected before the District can issue a documented Water Use Credit.

If you have any questions, please call me at the Permit and Conservation Office at 658-5601.

Sincerely,

Stephanie Pintar
Water Demand Manager

cc: David A. Berger, General Manager

END OF DOCUMENT



**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

5 HARRIS COURT, BLDG. G
POST OFFICE BOX 85
MONTEREY, CA 93942-0085 • (831) 658-5601
FAX (831) 644-9560 • <http://www.mpwmd.dst.ca.us>

Recording Requested by:
Monterey Peninsula Water Management District

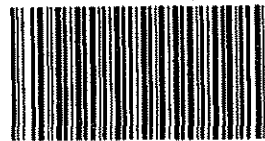
And When Recorded Mail To:
Monterey Peninsula Water Management District
Post Office Box 85
Monterey, California 93942-0085

Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Filer

CRSUSY
7/09/2009
11:49:57

DOCUMENT: **2009043091**

Titles: 1/ Pages: 9



Fees..... 34.00
Taxes.....
Other..... 2.00
AMT PAID \$36.00

**NOTICE AND DEED RESTRICTION
REGARDING LIMITATION ON USE
OF WATER ON A PROPERTY**

NOTICE IS GIVEN that the Monterey Peninsula Water Management District (hereinafter referred to as the Water Management District), duly formed as a water district and public entity pursuant to the provisions of law found at Statutes of 1977, Chapter 527, as amended (found at West's California Water Code Appendix, Chapters 118-1 to 118-901), has approved water service to the real property referenced below as "Subject Property".

NOTICE IS FURTHER GIVEN that the real property affected by this agreement is situated in the **County of Monterey**:

**ONE OLD RANCH ROAD, CARMEL VALLEY, CA 93924
(OAK PLACE - AREA F VOL 19 CT PG 19 TRACT NO 1120 - A PAR J 4.342 AC)
ASSESSOR'S PARCEL NUMBER 416-592-023-000**

This real property is hereinafter referred to as the "Subject Property." The Subject Property is located within the jurisdiction of the Water Management District. **Carmel Valley Mortgage Borrower L.L.C, a Delaware Limited Liability Company**, (hereinafter referred to as "Owner(s)"), is record Owner(s) of the Subject Property.

Owner(s) and the Water Management District each acknowledge and agree that the Subject Property shall be considered as meeting the specific Conditions of Approval dated **October 19, 2006** which are attached hereto and made a part hereof. This is a permanent requirement of the Subject Property.

Owner(s) and the Water Management District each acknowledge and agree that the landscaping water use at the Subject Property is limited and shall consist of:

- Proper design, installation and maintenance of a new irrigation system.
- Proper hydro-zoning of plants; grouping plant varieties together with other plants with similar water needs.
- Installation and permanent use of a real-time, weather-based irrigation controller serving all irrigated areas.
- There shall be a dedicated water meter(s) for all landscape irrigation.
- Generous use of mulch throughout the landscaped areas.
- No new additions of landscaped area.
- No addition of plants having a higher species coefficient than 2.0.
- The property owner shall implement a water education program for landscapers, gardeners and other employees who maintain or care for landscaping, including education about the District's water waste restrictions and clear direction that all irrigation to landscaping approved as a result of this credit request is to be done using the installed irrigation system and not by hand watering.
- The property owner shall implement a permanent training program on the proper use of the real-time weather-based irrigation controller for all employees who maintain the landscaping.
- Landscape (Group IV) Modified Non-Residential Use (per Rule 24, Table 2) as shown on landscape plans dated January 8, 2006

NOTICE IS FURTHER GIVEN that this agreement is binding and has been voluntarily entered into by Owner(s), and each of them, and constitutes a mandatory condition precedent to receipt of regulatory approval from the Water Management District relating to the Subject Property. This agreement attaches to the land and shall bind any tenant, successor or assignee of Owner(s).

NOTICE IS FURTHER GIVEN that present and/or future use of water at the Subject Property site is restricted by Water Management District Rules and Regulations to the water use requirements referenced above. Any modification to a water use connection as set forth in District Rule 20-B will require prior written authorization and Permit from the Water Management District. Approval may be withheld by the Water Management District, in accord with then applicable provisions of law. Present or future Allocations of water may not be available to grant any Permit to Intensify Water Use at this site. If any request to Intensify Water Use on the Subject Property is approved, Connection Charges and other administrative fees may be required as a condition of approval.

NOTICE IS FURTHER GIVEN that modification or Intensification of Water Use on the Subject Property that occurs without the advance written approval of the Water Management District is a violation of Water Management District Rules and may result in a monetary penalty for each offense as allowed by Water Management District Rules. Each separate day, or portion thereof, during which any violation occurs or continues without a good faith effort by the Responsible Party to correct the violation shall be deemed to constitute a separate offense. All Water Users within the jurisdiction of the Water Management District are subject to the Water Management District Rules, including Rules 11, 20, 21, 23, 24, and 148.

The Owner(s) and the Water Management District each intend that this Notice and Deed Restriction act as a deed restriction upon the Subject Property, and that it shall be irrevocable under its terms. This document shall be enforceable by the Water Management District or any public entity that is a successor to the Water Management District.

The Owner(s) elects and irrevocably covenants with the District to abide by the Conditions of Approval which are attached hereto and made a part hereof and by this Notice and Deed Restriction. But for the limitations and notices set forth herein, **approval of this Water Use Credit** would otherwise be withheld and found to be inconsistent with the Water Management District Rules and Regulations.

This Notice and Deed Restriction is placed upon the Subject Property. Any transfer of this property, or an interest therein, is subject to this deed restriction. This Notice and Deed Restriction shall have no termination date unless amended by the filing of a less restrictive deed restriction.

If any provision of this Notice and Deed Restriction is held to be invalid, or for any reason becomes unenforceable, no other provision shall thereby be affected or impaired.

The undersigned Owner(s) agrees with and accepts all terms of this document stated above, and requests and consents to recordation of this Notice and Deed Restriction Regarding Limitation on Use of Water on a Property. The Owner(s) further agrees to notify any present and future tenant of the Subject Property of the terms and conditions of this document.

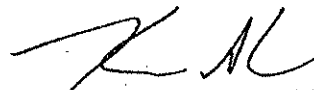
OWNER(S) agrees to recordation this Notice and Deed Restriction in the Recorder's Office for the County of Monterey. Owner(s) further unconditionally accepts the terms and conditions stated above.

(Signatures must be notarized).

**Carmel Valley Mortgage Borrower L.L.C.,
a Delaware Limited Liability Company**

**By: Carmel Valley Mezz 1 LLC,
a Delaware Limited Liability Company, Sole Member**

By:

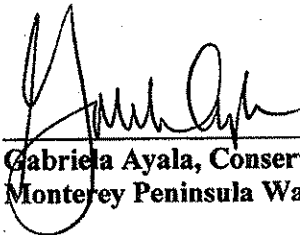


Dated:

6/12/09

Kenneth A. Caplan, Senior Managing Director and Vice President

By:



Dated:

7.9.09

**Gabriela Ayala, Conservation Representative
Monterey Peninsula Water Management District**

Attached: Conditions of Approval



**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

5 HARRIS COURT, BLDG. G
POST OFFICE BOX 85
MONTEREY, CA 93942-0085 • (831) 658-5601
FAX (831) 644-9558 • <http://www.mpwmd.dst.ca.us>

October 19, 2006

Miriam Schakat, Esquire
Lombardo & Gilles
Post Office Box 2119
Salinas, California 93902-2119

**Subject: Water Use Credit Application for Carmel Valley Ranch (APN 416-422-010 and
416-529-023)**

Dear Miriam:

This letter responds to a Water Use Credit request for removal of irrigated landscaping around the lodge and hotel units at Carmel Valley Ranch, Carmel Valley. This letter also addresses a request for Water Use Credits for installation of toilets using a maximum of one gallon per flush in the 144 resort lodge rooms, and several other issues related to compliance with District regulations at Carmel Valley Ranch.

Landscaping

To determine the potential water credit for landscape removal, the District staff agreed to review the water needs of the existing landscaping against the water needs of proposed landscaping. Ideally, the District staff wanted to review the original landscape and irrigation plans. It is our understanding that the original plans could not be located. Instead, drawings of the existing landscaping were prepared and compared against a landscape plan for the proposed project. You submitted water budgets for the existing and proposed landscaping completed by Landscape Architect Michael Bellinger.

District staff member Rob Cline, a Certified Landscape Irrigation Auditor, reviewed the landscape plans and the water use calculations provided. Rob also visited the site with you and the head groundskeeper to examine the existing landscaping. Based on his review of documents you submitted and site observations, Rob has recommended using an average plant species coefficient of 0.5 (0.1 being very low water needs, 1.0 being very high) in calculating the current and proposed applied water estimates. It is also his professional opinion that it is not appropriate to adjust the microclimate factor or density factor (two other derivatives of the landscape coefficient), as these factors vary considerably by season and maintenance practices. Finally, Rob has indicated that use of the Maximum Applied Water Allowance (MAWA) is inappropriate for existing landscaping. Therefore, this response was prepared using the Estimated Applied Water (EAW) for both the existing and proposed conditions, which is a more accurate long-term representation of water use following establishment. It should also be noted

that the annual Average Reference Evapotranspiration (ET_o) for this site is 46.3 inches (i.e. ET_o Zone 3, coastal valleys and plains and north coast mountains), rather than 48.5 inches (CIMIS data from a station in the more arid Arroyo Seco region) as Mr. Bellinger used on the water calculations shown on the plans. The average annual rainfall for the Monterey region is 19.62 inches. Rainfall at Carmel Valley Ranch area is approximately one to two inches higher. The District staff's calculations reflect the information contained in this paragraph. Rob's detailed analysis is available upon request.

The landscape plans submitted to the District in September 2006 indicate that there will be a reduction of 5,591 square-feet of landscaped area. Using the prescribed method of the State Model Landscape Ordinance (and the information provided in the previous paragraph) to determine the EAW for the existing and proposed landscaping, District staff calculated:

Existing EAW = 3,071,175.8 gallons annually or 9.425 AFA

Proposed EAW = 2,973,329.9 gallons annually or 9.125 AFA

These numbers reflect the average coefficient. However, by improving the efficiency of the landscaping, it is possible to considerably reduce water use and reduce the coefficient. To achieve this as a permanent reduction in use as required by District Rule 25.5, the following conditions will be required, and a lower plant species factor will be applied to the proposed project's water use calculations, achieving an EAW of 2.18 AFA. The difference between existing EAW (9.925 AFA) and the reduced demand EAW of 2.18 AFA represents a savings of approximately 7.245 AFA. To achieve this reduction, the following District Water Use Credit approval conditions will be required:

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4. There shall be a dedicated water meter(s) for all landscape irrigation. *The District understands that there are at least five water meters serving the Lodge Resort parcel. Prior to issuance of a water credit, provide the District with information for each meter, including the location of the meter, the specific uses and location of the uses on that meter.*
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Miriam Schakat
CV Ranch, October 19, 2006
Page 5

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Documentation of Credit

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If you have any questions, please call me at the Permit and Conservation Office at 658-5601.

Sincerely,

Stephanie Pintar
Water Demand Manager

cc: David A. Berger, General Manager

END OF DOCUMENT

Anthony L. Lombardo
Jeffery R. Gilles

Dennis C. Brougher
Patrick S.M. Casey
J. Kenneth Gorman
Amy Purchase Reid
Jason Reffner
Paul Rovella
Bradley W. Sullivan
James W. Sullivan
Kelly McCarthy Sutherland

Of Counsel
E. Soren Diaz
Virginia A. Hines



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888-757-2444 (TOLL FREE)
831-754-2011 (FAX)
www.lomgill.com

530 San Benito St., Suite 202
Hollister, CA 95023
831-630-9444
831-630-5935 (FAX)

File No. 00197.001

September 30, 2009

VIA FACIMILE AND E-MAIL

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

Re: September 16, 2009 Draft SWRCB Cease and Desist Order WR 2009-00XX In the Matter of the Unauthorized Diversion and Use of Water By the Cal Am Water Company

Dear Chair Hoppin and Members of the Board:

Our firm represents several property owners who will be adversely affected by the unprecedented restrictions being contemplated in the above referenced Cease and Desist Order ("CDO"). These property owners include notable hotels and resorts within Cal-Am's service area boundary, including Quail Lodge, Carmel Valley Ranch Resort and many other property owners, including the Steiny family, who have operated for years within the strict rules and regulations governing water use within this area.

Over the years, these property owners have made significant investments to reduce their potable water demand with the expectation that these investments would provide the necessary water entitlements (e.g. water allocation or water credit) to serve the long term needs of these businesses. For example, in October, 1989, MPWMD approved the Annexation of Quail Meadows into the California-American Water Company service area. The approval was based on Quail Meadows retrofitting of the irrigation system at the golf course, which resulted in significant water savings. In June, 1993, MPWMD adopted Ordinance 70, which allocated 35 acre-feet (32.9 acre-feet/year of metered Cal-Am sales) of the total Cal-Am production to specifically serve the Quail Meadows Subdivision. Attached as Exhibit A is Ordinance 52, which established the original Quail Meadows water allocation and Ordinance 70 that confirmed the allocation. Accordingly and since 1989 when Quail Meadows was first annexed into the Cal Am service territory, MPWMD has recognized a water entitlement for the Quail Meadows subdivision based on the documented and costly water saving projects undertaken by this entity.

In April 2008, Quail Lodge applied for and the County approved a five year extension of a previously approved Use Permit for a 40 room hotel and seminar center within Quail Meadows. Due to the worldwide recession and in particular the difficulties being experienced by

EXHIBIT C

Jeanine Townsend
Clerk of the Board
September 30, 2009
Page 2

the hospitality industry, it is unlikely that Quail Lodge will proceed with the project in the near future. The continued viability of this project will hinge on the availability of the approved water allocation.

Quail Lodge also is the holder of approved MPWMD water credits totaling 8.575 acre-feet. Attached as Exhibit B is a copy of the MPWMD letters confirming the existence of these water credits. These water credits resulted from the permanent reduction of the number of restaurant seats and the permanent reduction of landscaping areas at the Quail Lodge property.

Like Quail Lodge, Carmel Valley Ranch is the beneficiary of an approved water allocation and water credit. In December 2006 and in exchange for not developing several previously approved and entitlement lots, Carmel Valley Ranch received a water allocation for a presently un-built, 12-lot, subdivision. In 2008, the Monterey County Water Resources Agency confirmed that the County continues to hold 8.807 acre-feet per year from its existing MPWMD allocation of Cal Am water for the future, but un-built, 12-lot subdivision. Attached as Exhibit C is a copy of the letter from the County Water Resources Agency confirming the water allocation.

Carmel Valley Ranch also made significant changes to its landscaping and irrigation practices and performed extensive retrofitting at the hotel, which resulted in an approved water credit. Attached as Exhibit D is a copy of letter from the MPWMD approving the water use credit based on the significant water savings that were achieved from the landscaping modifications and retrofits.

The Steiny family, who intends to build a modest mixed use project on a small parcel within the Cal Am service area is relying upon a water allocation for the continued viability of this project. The water allocation is based on a previously approved and partially constructed project on site. While a mixed use project on this may not constitute a new service connection or require an increase in water to an existing service connection, the CDO remains unclear about whether water allocations and water credits will be available to serve this project.

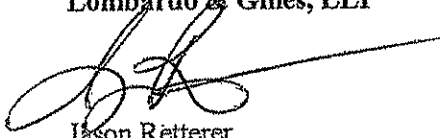
In light of the significant time, expense, and planning that our clients have undertaken to ensure that their future availability of water to meet their long term strategic planning needs, we request that the SWRCB revise the CDO to recognize the ongoing availability of existing, but unused water allocations and water credits, to serve new connections or increase water service at existing service connections.

If you have any questions or need additional information, please feel free to call me at (831) 754-2444.

Jeanine Townsend
Clerk of the Board
September 30, 2009
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Sincerely,

Lombardo & Gilles, LLP

A handwritten signature in black ink, appearing to read "JR", with a long horizontal line extending to the right.

Jason Retterer

JR/nsc

Enclosures

ORDINANCE NO. 52

AN ORDINANCE OF THE
BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
IMPLEMENTING THE WATER ALLOCATION PROGRAM,
MODIFYING THE RESOURCE SYSTEM SUPPLY LIMIT,
AND CAUSING A TEMPORARY LIMIT ON THE
ISSUANCE OF WATER CONNECTION PERMITS

RECEIVED
DEC 18 1990
M.P.W.M.D.

FINDINGS

1. The Water Allocation Program EIR is the core environmental document concerning water supply and water distribution issues affecting the Monterey Peninsula. That document assesses cumulative impacts caused by each individual water meter permit or connection which allows new or expanded water use.
2. The Water Allocation Program EIR substantially alters past assumptions regarding the quantity of water available from the Monterey Peninsula Water Resource System. Even the lowest supply option and the recommended mitigation program will not avoid all significant environmental impacts caused by water use. Annual non-rationed Cal-Am production as of the end of this calendar year is estimated to exceed available water supplies by 230 acre feet. This situation will remain until new water supplies can be developed.
3. The District considered overriding considerations to continue granting new water use permits despite the fact that normal water demand exceeds the available supply. The District chose not to adopt those findings, and instead the Board of Directors made a firm commitment to allocate only supplies of water that are presently developed for use.
4. The Board also determined that the present water supply emergency, and water rationing, is intensified because of past deficit spending of water supplies, and the past allocation of "paper water." District water systems have mined area groundwater basins with significant adverse impact upon both human and environmental habitats. Although water rationing has temporarily decreased demand, normal unrationed demand exceeds the supply of water which is available for use.
5. Adverse impacts caused by current water supply practices cannot be mitigated to a less than significant degree by

anything short of eliminating the basic problem caused by withdrawing too much water from Carmel Valley. Other mitigations constitute only temporary, stopgap measures. As such, the District is committed to a set of mitigations that increase the available water supply and limit water demand. Included among these is the commitment to pursue as the District's highest priority the construction of a major, long-term water supply project to provide water for restoration of the environment as well as for public water supply. The District shall also pursue a series of interim water projects that can be developed faster than a new dam.

6. In addition to the area's chronic water supply shortage, a temporary water emergency has also been caused by the present drought. This drought is one of the most severe in the historical record of the Monterey Peninsula. The District has experienced four consecutive years of substandard (less than average) rainfall. Historic evidence indicates that this area periodically experiences droughts of 5 to 7 year duration, and longer.
7. Because of this drought, the District imposed mandatory conservation measures during the summer of 1988, and instituted mandatory water rationing on January 1, 1989. During 1989, however, the District continued to grant permits for new or intensified water use. In further response to the continuing water supply emergency, the District then limited the number of new water connection permits to 110 acre feet per year of increased water use by adoption of Ordinance 47 in January, 1990.
8. The Water Allocation EIR now shows that each additional water connection and expanding use from existing connections intensifies demand on existing water supplies, and further endangers citizens of the Monterey Peninsula during times of water shortage. Increased water use during a drought exacerbates detrimental environmental impacts caused by the extraction of water. This ordinance limits new water use to protect existing water supplies, to ensure sufficient supplies are available to meet the human and environmental needs, and to motivate existing water consumers to achieve the reduction of water use necessitated by the water rationing program.
9. Due to the present danger posed by limited water supplies during the continuing drought, and due to the limited nature of the area's water supply as shown by the Water Allocation EIR, time is of the essence and limits on new and expanded uses of water are urgently required. This water shortage constitutes a water supply emergency which is a present and extraordinary threat to the health and safety of the citizens of the Monterey Peninsula. Without a limitation on

growing water demand, and without an increase in the available supply, each additional water connection and each expansion of use from existing connections in the Monterey Peninsula Water Resource System intensifies the significant impacts upon both human and environmental habitats. Increased demand on existing water supplies further endangers citizens of the Monterey Peninsula, and intensifies detrimental effects of any drought or other water shortage emergency.

10. The District shall allocate only that supply of water which is presently available. This ordinance implements select mitigations identified in the District's Water Allocation Program EIR and imposes limitations on new water uses which are necessary to protect existing water supplies, to ensure sufficient supplies are available to meet the human and environmental water use needs. These actions shall also provide additional incentives to existing water consumers to achieve the reduction of water use necessitated by the water rationing program.
11. Until new supply is developed, the total water demand within the Monterey Peninsula Water Resource System shall be limited to 19,881 acre-feet per year, with a water production limit of 16,744 acre-feet per year for the Cal-Am system.
12. A select category of new connections shall nonetheless be permitted by this ordinance, however, where the proposed new use of water clearly balances the benefit the project will confer upon the community at large against the burden that project shall place upon the water supply. This category is limited to those projects which are permanently and exclusively dedicated to promoting public health, safety, or welfare.
13. Increased demand without additional water supply can only intensify the present danger posed by over dedication of existing limited water supplies. The present over dedication of the existing water supply constitutes a water supply emergency in accord with Section 332 of the District Law. Limits on new and expanded uses of water are therefore urgently required.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Statement of Purpose, Selection of Water Supply Option, and Finding of Water Supply Emergency

The Monterey Peninsula Water Management District enacts this ordinance to implement the water allocation program, to modify standards for the issuance of water connection permits, and to enact a temporary limit on new uses of water. This interim measure is enacted due to the present over-dedication of the existing water supply. This circumstance constitutes a water supply emergency in accord with Section 332 of the District Law. This measure is also required to maintain a balance between water demand and the limited water available for consumption.

This ordinance implements the water allocation program, water supply option, and select mitigation measures consistent with evidence presented by the District's Water Allocation Program EIR. The District confirms its selection of Supply Option V as identified in the Water Allocation Program EIR. This Supply Option means that the total annual production from the Monterey Peninsula Water Resource System shall be limited to 19,881 acre-feet, and Cal-Am's annual water supply capacity limit shall not exceed a production level of 16,744 acre-feet. Only 15,572 acre-feet shall be available for annual water sales to consumers within the Cal-Am system due to system losses and unmetered consumption. Non Cal-Am water production shall not exceed a level of 3137 acre-feet per year.

This ordinance enacts temporary measures to ensure that consumption of potable water does not exceed existing water supplies available to the District. This ordinance is required to meet the health and safety requirements of the communities served by the District.

Section Two: Water Distribution Systems Affected

A. Systems affected. The provisions of this ordinance shall apply to each of the following water distribution systems which derive their source of supply from the Monterey Peninsula Water Resource System, and water users within those systems:

- Californian American (Cal-Am) Water Company, and all Cal-Am sub-units except as exempted below in part B of this Section.
- Water West
- Seaside Municipal

- Carmel Valley Road
- Riverside Park
- Saddle Mountain
- Rancho Fiesta Road 1 & 2
- Rancho San Carlos Road
- any water system which derives its source of supply from one or more subunits of the Monterey Peninsula Water Resource System.

B. Systems exempted. This ordinance, however, shall not apply to any of the following water distribution systems, or water users within those systems:

- Ryan Ranch
- Country Club Rd.
- Los Robles Road
- P & M Ranch
- Rancho Fiesta Mutual
- Carmel Valley Mutual
- Schulte Road
- Sleepy Hollow
- Tao Woods Mutual
- Cachagua Rd. I
- Brannan
- Prince's Camp
- Cachagua Rd. II
- Jones
- Jensen Mobile Home
- Moro Mini
- Nason Road

- Los Ranchitos de Aguajito
- Bishop Water Company
- properties which rely upon reclamation or conservation based water entitlements for the Cal-Am Water Company pursuant to Rule 23.5.
- properties in the Quail Meadows subdivision (AP No. 157-121-17) which rely upon reclamation or conservation based water entitlements (not to exceed 33.4 acre feet) deriving from the October 9, 1989 annexation to the Cal-Am Water Company.
- any water system which derives 100% of its source of supply from water resources other than the Monterey Peninsula Water Resource System.

The water systems and water users referenced in part B of this Section shall be exempt from the limitations effected by this ordinance.

Section Three: Limitation on Select New Water Uses

A. General Limit on Permits which Intensify Water Use.

Upon the effective date of this ordinance, a temporary limit shall take effect for those water systems listed in Part A of Section Two above with respect to the issuance of all permits for new or expanded water use. Except as may be provided for in Part B (exemptions) or in Part C and Part D (variances) of this Section Three, District staff shall suspend all action to receive applications after the effective date of this ordinance. This limitation, however, shall not inhibit staff's authority to process complete applications received prior to the effective date of this ordinance, or to issue a permit based upon each such application.

B. Exemption for Permits for development which do not Intensify Water Use on that Site.

Notwithstanding the limit on the issuance of permits set forth by this ordinance, the District may continue to receive and process applications, and grant permits pertaining to existing water meters and water connections which cause no net increase in water demand on the site served by that water meter or connection. Projects for development which do not intensify water use shall only include those applications relating to water use through existing water connections: (1) where the applicant can prove by clear and convincing evidence that the development shall not

expand or intensify water use capacity on that site, or (2) where the expansion of commercial water use through an existing water connection results from the changed use of an existing structure, and does not require any addition of space to the structure.

Applications based on conserved water must clearly document that water savings are real, and permanent. Offsite water credit transfers shall not be allowed by this exemption.

Any application for a new water meter or connection which is based upon a reduction in prior demand shall only be allowed in accord with the variance process set forth in Part D of this Section.

Based on the above criteria, the following water meter and water connection permits may be issued pursuant to this Part B during the limitations set by this ordinance:

development based on documented water conservation measures:

- all permits for the expansion of water use through existing water connections which are based on conserved water which can be documented to be permanently withdrawn from use on that same site.

applications for changed commercial water use in existing structures:

- all permits for the expansion of commercial water use through existing water connections which result from changed use of existing structures, and which do not require any addition of space to the structure.

development based upon documented pre-existing water use:

- all permits for the placement of new water meters or water connections relating to any subdivision of property wholly located in the California American Water Company service area and (1) which property currently utilizes water from existing on-site wells in addition or in lieu of water supplied by Cal-Am, and (2) which causes no resulting net increase in the overall use of water by reason of this offsetting supply which can be documented to be permanently withdrawn from use on that same site, (3) which does not adversely impact developed water uses of the Monterey Peninsula Water Resource System, and (4) which pre-existing use had been accounted for as "non Cal-Am production" in the Water Allocation Program EIR.

C. Variance for Applications to Intensify Demand for Public Health, Safety or Welfare.

This variance category shall apply to applications benefiting public health, safety or welfare which may increase consumptive demand from the Monterey Peninsula Water Resource System, but which do not propose to increase water supplies. Each application for a project listed in this paragraph C. shall be reviewed by the Board of Directors under the notice and hearing process set forth in District Rule 70 for Permit Appeals.

In its exercise of discretion on the variance application, the Board of Directors shall weigh the benefit a project would confer upon public health, safety or welfare of the Monterey Peninsula against the water use burden that the project shall place upon the Monterey Peninsula Water Resource System and shall find that the proposed project meets an overriding community need. Thereafter, the Board may choose to grant approval, deny approval, or place conditions upon the quantity or nature of water use on that site.

Based on the above criteria, the following water permits may be issued during the limitations set by this ordinance only upon the grant of a discretionary variance by the Board of Directors:

governmental projects:

- all permits for the placement of new water meters or connections which are permanently and exclusively dedicated to public ownership and use which promote the public health, safety, or welfare of the Monterey Peninsula.
- all permits for the expansion of water use through existing water meters or connections which are permanently and exclusively dedicated to public ownership and use which promote the public health, safety, or welfare of the Monterey Peninsula.

non-governmental community projects:

- all permits for the placement of new water meters or connections which are permanently and exclusively dedicated to community non-profit uses which promote the public health, safety, or welfare of the Monterey Peninsula.
- all permits for the expansion of water use through existing water meters or connections which are permanently and exclusively dedicated to community non-

profit uses which promote the public health, safety, or welfare of the Monterey Peninsula.

D. Variance for Applications to Intensify Demand which also Propose to Increase Water Supplies or which Propose to Offset New Demand with On-site Water Use Savings.

This variance category shall apply to projects which propose to increase consumptive demand from the Monterey Peninsula Water Resource System, but which also propose a parallel increase in water supplies, or which propose a new water use which is offset by water use savings created at that same site. Each application for a project listed in this paragraph D shall be reviewed by the Board of Directors under the notice and hearing process set forth in District Rule 70 for Permit Appeals.

In its exercise of discretion on the variance application, the Board of Directors shall weigh the general benefit a project would confer upon the Monterey Peninsula against the water use burden that the project could place upon the Monterey Peninsula Water Resource System in the event the new water supply were not sufficient to meet all demand caused by the new development, or in the event the on-site water use reduction was not permanently achieved. Applications in this category shall only be approved where the applicant can prove by clear and convincing evidence that the increase in new water supply (or reduction in past use at that site) has been caused by that applicant and is in addition to any program or standard otherwise pursued by the District.

Applications which develop new water supplies must clearly document an augmentation of firm yield which is additional to that presently available from the Monterey Peninsula Water Resource System. Applications based on conserved water must clearly document that water savings are real, and permanent. Offsite water credit transfers shall not be allowed by this exemption.

The Board may choose to grant approval, deny approval, or place conditions upon the quantity or nature of water use on that site, provided however, that the Board shall ensure no more than one-half of the new water supply, or no more than one-half of the reduction in prior demand on that site is allowed for use under this provision.

Based on the above criteria, the following water permits may be issued during the limitations set by this ordinance only upon the grant of a discretionary variance by the Board of Directors:

expansion of water distribution systems:

- all permits to add new water production facilities to a water distribution system where those production facilities derive from a subunit of the Monterey Peninsula Water Resource System.
- all permits to add new water distribution facilities to a water distribution system whose production facilities derive from a subunit of the Monterey Peninsula Water Resource System.

development based on new water supplies:

- all permits for the placement of new water connections or meters which are based on newly developed water which can be documented to augment other existing supplies from the Monterey Peninsula Water Resource System.
- all permits for the expansion of water use through existing water meters or connections which are based on newly developed water which can be documented to augment other existing supplies from the Monterey Peninsula Water Resource System.

development based on documented water conservation measures:

- all permits for the placement of new water meters or connections which are based on conserved water which can be documented to be permanently withdrawn from use on that same site.

Section Four: Definitions

The following phrases, as used in this ordinance, shall be given the definition set forth below.

"Monterey Peninsula Water Resource System" - shall mean the ground water and surface water supplies which serve major water distribution systems within the District, including the surface water and groundwater resources of the Carmel Valley (both the Carmel River and the Carmel Valley aquifer) and the resources of the Seaside Coastal groundwater subbasin. The Monterey Peninsula Water Resource System shall exclude resources of the Seaside Inland groundwater subbasin, and the Carmel Valley upland formation.

"Parcel" and "Site" - shall mean any unit of land which qualifies as a parcel or lot under the Subdivision Map Act, and shall include all units of land: (1) which are contiguous to any other parcel (or are separated only by a road or easement), and (2) for which their is unity of ownership, and (3) which have a similar present use.

Section Five: Effective Date

This ordinance shall be given effect at 12:01 a.m., January 1, 1991.

Section Six: Revocation of Ordinance 47

Effective at 11:59 pm, December 31, 1990, this ordinance shall cause the revocation of Ordinance 47, entitled "An Urgency Ordinance of the Board of Directors of the Monterey Peninsula Water Management District Causing a Temporary Limit on the Issuance of Water Connection Permits" which was adopted as an urgency ordinance on the 22nd day of January, 1990. On or after January 1, 1991, water connection permits shall issue only on this Ordinance 52; none shall issue based on Ordinance 47.

Section Seven: Review and Sunset Provision for this Ordinance

The standards enacted by this ordinance to limit the issuance of water connection permits shall be reviewed at the time any new supplies of water have been developed which augment the available supply from the Monterey Peninsula Water Resource System. Until new supplies of water are developed, this ordinance shall have no sunset provision.

Section Eight: Publication and Application

The provisions of this ordinance shall not be published in the permanent Rules and Regulations of the Monterey Peninsula Water Management District, but shall be separately distributed together with those Rules. This Ordinance shall be read in conjunction with and compliment those provisions of the District's Rules and Regulations, provided, however that the provisions of this measure shall take precedence and supersede any contradictory provision of those rules.

Section Nine: Severability

If any subdivision, paragraph, sentence, clause or phrase of

this ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforcement of the remaining portions of this ordinance, or of any other provisions of the Monterey Peninsula Water Management District Rules and Regulations. It is the District's express intent that each remaining portion would have been adopted irrespective of the fact that one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

On motion of Director Heuer, and second by Director Mekhuis, the foregoing ordinance is adopted upon second reading this 13th day of December, 1990, by the following vote:

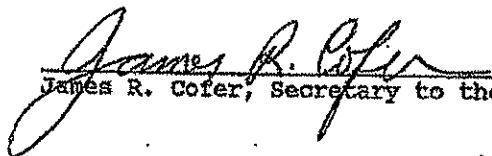
AYES: Directors Mekhuis, Long, Strasser Kauffman and Heuer

NAYS: Director Hughes

ABSENT: Director Davis abstained

I, James R. Cofer, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing is a full, true and correct copy of an ordinance duly adopted this 13th day of December, 1990.

Witness my hand and seal of the Board of Directors this 13th day of December, 1990.


James R. Cofer, Secretary to the Board

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Final Version

Ordinance No. 70

**AN ORDINANCE OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
MODIFYING THE RESOURCE SYSTEM SUPPLY LIMIT,
ESTABLISHING JURISDICTIONAL ALLOCATIONS,
AND REPEALING AND ENDING
THE MORATORIUM AND LIMIT ON THE
ISSUANCE OF WATER CONNECTION PERMITS**

FINDINGS

1. The Monterey Peninsula Water Management District enacted Ordinance No. 52 on December, 1990 (later amended and republished by Ordinance No. 59 in 1991 and Ordinance No. 62 in 1992) to implement the water allocation program, to modify standards for the issuance of water connection permits, and to temporarily limit new uses of water. That limit established a moratorium on the issuance of most water connection permits.
2. Ordinance No. 52 was based upon evidence presented by the District's Water Allocation Program EIR which confirmed the selection of Supply Option V and established an annual production limit from the Monterey Peninsula Water Resource System of 19,881 acre-feet, and an annual production limit of 16,744 acre-feet upon the California-American water distribution system.
3. The Water Allocation Program EIR substantially altered past assumptions regarding the quantity of water available from the Monterey Peninsula Water Resource System. Annual non-rationed Cal-Am production calculated as of the end of 1990 exceeded available water supplies by 230 acre feet.
4. Review of Ordinance Nos. 52, 59 and 62 was required when new water was developed and integrated into the Cal-Am delivery system. This ordinance repeals the moratorium as soon as Cal-Am receives a use permit from the City of Seaside to treat water from the already constructed Paralta Well.
5. The moratorium enacted by Ordinance No. 52 is no longer needed as new water deriving from the Seaside Coastal Ground Water Basin (through the Paralta Well) has been developed. This new water source ensures consumption of potable water shall not exceed existing water supplies.
6. This expanded supply of water has also caused an expansion of the territory included within the Monterey Peninsula Water Resource System. This Ordinance sets a new annual production limit from the Monterey Peninsula Water Resource System of 20,673

acre-feet, an annual production limit of 17,619 acre-feet upon the Cal-Am water system (sales of 16,380 afa), and an annual production limit of 3,054 acre-feet upon non-Cal-Am water users and water systems which also derive their source of supply from the Monterey Peninsula Water Resource System.

7. This Ordinance recognizes the previous dedication for use of the 230 acre feet deficit (calculated against water available under Supply Option V), and allocates an additional 385 acre feet of production from the expanded supply of water from the Paralta Well. This water is divided in differing amounts among each of the Jurisdictions within the District and also to a District Reserve, in accord with District Rule 30, adopted by Ordinance 60 in June, 1992.
8. The quantity of water now available for production by the California-American Water Company (17,619 acre-feet/year) is a quantity between Supply Option IV (17,500 afa) and Supply Option I (18,400 afa), and replaces the former Supply Option V by reason of the expanded supply of water from the Paralta Well.
9. This Ordinance further incorporates previous decisions of the District which affect accounting for use of the existing water supplies, including the annexation of the Water West Water Distribution System and the Quail Meadows subdivision (APN 157-121-017) to the California-American Water Company. A special reserve of 14.18 acre feet (production) has been provided for within the Water West Water Distribution System, and dedicated for use within the boundaries of the former Water Distribution System. This reserve results from the difference between the supply of 264 acre feet available to the Water West Distribution System contained in the Allocation EIR and the calculation of the current production need of the Water West Distribution System including ten percent system losses. Revised production estimates have been used for the distribution systems and private wells deriving their water supply from the Monterey Peninsula Water Resource System.
10. This Ordinance does not distribute for use or allocation any portion of the potable water which may be freed by reason of the Pebble Beach Community Services District/Carmel Area Wastewater District Wastewater Reclamation Project. That increment of 420 acre feet of potable water remains within the production and sales data for the California-American Water System, and no portion of that increment has been allocated for Jurisdictional or District Reserve purposes. Further, properties which rely upon reclamation water entitlements pursuant to Rule 23.5 are not affected by this Ordinance.
11. This measure shall repeal Ordinance No. 52, Ordinance No. 59, and Ordinance No. 62 and shall cause an end to the District's moratorium on issuance of water permits.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Statement of Purpose.

This ordinance continues implementation of the water allocation program, selection of water supply option, and certain mitigation measures consistent with the District's Water Allocation Program EIR. This Ordinance confirms the selection of Supply Option I (production not to exceed 18,400 afa) as identified in the Water Allocation Program EIR.

This measure modifies the resource system supply limit for the Monterey Peninsula Water Resource System, repealing Ordinance No. 52, Ordinance No. 59, and Ordinance No. 62. The effect of this Ordinance shall be to increase the production limit for the Cal-Am water distribution system and end the moratorium and limit on the issuance of water connection permits.

This Ordinance further allocates the expanded supply of water among the Jurisdictions within the District, and sets a District Reserve in accord with District Rule 30, adopted by Ordinance 60 in June, 1992.

The production limits set by this Ordinance further accounts for previous water allocation decisions of the District, including the annexation of the Water West Distribution System and the Quail Meadows subdivision (AP No. 157-121-17) to the California-American Water Company. The limits also revise production estimates for the distribution systems and private wells deriving their water supply from the Monterey Peninsula Water Resource System.

Section Two: Water Users Affected

A. Systems and Water Users Affected. The resource limits set by this ordinance shall apply to each of the following water distribution systems and water users deriving their source of water from the Monterey Peninsula Water Resource System:

- California-American (Cal-Am) Water Company, and all Cal-Am sub-units including Water West, Rancho Fiesta Mutual, and properties in the Quail Meadows subdivision (APN 157-121-017) which rely upon the October 9, 1989 annexation to the Cal-Am Water Company. (Provided, however, that properties which rely upon reclamation water entitlements pursuant to Rule 23.5 shall be governed instead by part B of this Section.)
- Seaside Municipal
- Bell/Vandervort

- Clark/Wells Fargo
- Fair Weather
- Los Robles Road
- Old River Ranch
- Rancho San Carlos Road
- Riverside Park
- Schut/Jones
- Selle
- any water system which derives its source of supply from one or more subunits of the Monterey Peninsula Water Resource System.
- any individual water user deriving water from one or more subunits of the Monterey Peninsula Water Resource System.

B. Systems and Water Users Not Affected. The resource limits set by this ordinance shall not apply to the following water distribution systems or water users which do not derive their source of water from the Monterey Peninsula Water Resource System:

- Agua Fresca
- Bishop Water Company
- Bosso
- Cachagua Rd. I
- Cachagua Rd. II
- Carmel Valley Mutual
- Country Club Rd.
- Dollase
- Hanover - Monterra

- Jensen Mobile Home
- Los Ranchitos de Aguajitos
- Morrow Mini
- Nason Road
- P & M Ranch
- Prince's Camp
- Ryan Ranch
- Saddle Mountain
- Schulte Road
- Sleepy Hollow
- Tao Woods Mutual
- properties which rely upon reclamation or conservation based water entitlements for the Cal-Am Water Company pursuant to Rule 23.5.
- any water system which derives 100% of its source of supply from water resources other than the Monterey Peninsula Water Resource System.

Section Three: Water Resource System Production and Sales Limits.

A. Resource Limits. The total annual production limit from the Monterey Peninsula Water Resource System shall be increased from 19,881 acre-feet to 20,673 acre-feet. Cal-Am's annual water supply capacity limit shall be increased from a production level of 16,744 acre-feet to a production level of 17,619 acre-feet. Of this, 16,380 acre-feet shall be available for annual water sales to consumers within the Cal-Am system due to system losses and unmetered consumption. Non Cal-Am water production shall not exceed a level of 3,054 acre-feet per year.

B. Accounting. Each new water connection or permit for expanded water use shall be strictly accounted for, and each new water use shall be debited from the water supply available to both the Monterey Peninsula Water Resource System, the water distribution system affected by that new or expanded water use, and debited from the appropriate Jurisdiction or

District Reserve allocation.

C. Publication as Rule 32. The provisions A and B of Section Three set forth above shall be published in the permanent Rules and Regulations of the Monterey Peninsula Water Management District as Rule 32, "Water Resource System Production and Sales Limits".

Section Four: Jurisdictional and Reserve Water Allocations.

A. Jurisdictional Allocations. Permits to authorize new or intensified water use from the California-American Water Company shall be issued by the District for use in any Jurisdiction pursuant to the application and approval process set forth in District Rule 23. The total quantity of new or intensified water use in each respective Jurisdiction, however, pursuant to Rule 23 (c) 1, shall not exceed the amounts set forth in this section:

Carmel by the Sea.....	15.07 acre feet
Del Rey Oaks.....	3.76 acre feet
Monterey (City).....	71.98 acre feet
Pacific Grove.....	21.43 acre feet
Sand City.....	47.52 acre feet
Seaside.....	61.11 acre feet
Monterey County.....	83.37 acre feet
Monterey Peninsula Airport District.....	3.76 acre feet

B. District Reserve Allocation. Permits to authorize new or intensified water use from the California-American Water Company may further be issued by the District for use in any Jurisdiction pursuant to the application and approval process set forth in District Rule 23 (c) 2. The total quantity of new or intensified water use from the District Reserve Allocation pursuant to Rule 23 (c) 2, however, shall not exceed 50 acre feet.

C. Water West Adjustment Reserve. A special reserve shall be established to replenish the Monterey County allocation for new water use which occurs within the boundaries of the former Water West Water Distribution System. Replenishment of Monterey County's allocation from this special reserve shall occur only upon the approval of water use for real property within the Water West boundary which is subdivided after the effective date of this ordinance. The total quantity of water used to replenish Monterey County's allocation pursuant to this paragraph shall not exceed 12.76 acre feet (sales).

D. Publication as Rule 33. The provisions A and B of Section Four set forth above shall be published in the permanent Rules and Regulations of the Monterey Peninsula Water Management District as Rule 33, "Jurisdictional and Reserve Water Allocations".

Section Five: Effective Date

This ordinance shall be given effect at 12:01 a.m., on July 21, 1993, or as soon thereafter as possible provided the California-American Water Company first receives a Use Permit from the City of Seaside which allows treatment of potable water from the Paralta Well at the Ord Grove site. Before a valid use permit is held by Cal-Am, however, this ordinance shall have no force or effect.

Section Six: Review and Sunset Provision for this Ordinance

The standards enacted by this Ordinance shall be reviewed at the time any new supplies of water have been developed which augment the available supply from the Monterey Peninsula Water Resource System. Similar review of the standards enacted by this Ordinance shall be required at any time there may be a substantial and permanent reduction in the supply of water available for use from the Monterey Peninsula Water Resource System. This Ordinance shall have no sunset provision.

Section Seven: Publication and Application

A. Publication of Rules 32 & 33. As soon as the California-American Water Company possesses a Use Permit from the City of Seaside which allows treatment of potable water from the Paralta Well at the Ord Grove site, following the effective date of this ordinance, the following provisions of this Ordinance shall be published in the permanent Rules and Regulations of the Monterey Peninsula Water Management District:

Section Three A and B shall be published as Rule 32.

Section Four A and B shall be published as Rule 33.

B. Change to the title of Regulation III. The title of Regulation III, "Municipal Unit Allotment" shall be changed to "Jurisdictional Allocations."

C. Conjunctive Effect. This Ordinance shall be read in conjunction with and complement those provisions of the District's Rules and Regulations.

Section Eight: Severability

If any subdivision, paragraph, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or

unenforceability shall not affect the validity or enforcement of the remaining portions of this Ordinance, or of any other provisions of the Monterey Peninsula Water Management District Rules and Regulations. It is the District's express intent that each remaining portion would have been adopted irrespective of the fact that one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

On motion of Director Heuer, and second by Director Karas, the foregoing ordinance is adopted upon second reading this 21st day of June, 1993, by the following vote:

AYES: Directors Long, Hughes, Hekhuis, Farina, Pendergrass, Heuer and Karas

NAYS: None

ABSENT: None

I, James R. Cofer, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing is a full, true and correct copy of an ordinance duly adopted this 21st day of June, 1993.

Witness my hand and seal of the Board of Directors this 28th day of June, 1993.


James R. Cofer, Secretary to the Board

EXHIBIT A



**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

5 HARRIS COURT, BLDG. G
POST OFFICE BOX 85
MONTEREY, CA 93942-0085 • (831) 658-5601
FAX (831) 644-9560 • <http://www.mpwmd.dst.ca.us>

December 21, 2007

Anthony Lombardo
Lombardo & Gilles
Post Office Box 2119
Salinas, CA 93902

Subject: Extension of Water Use Credit for Quail Lodge Inc. Carmel APN: 157-031-014 and 022

Dear Mr. Lombardo:

In accordance with MPWMD Rule 25.5, the following Water Use Credit has been extended for 60 months at the site referenced above:

Credit for 3.345 acre-feet for the permanent reduction of the number of restaurant seats at the Lodge and the Clubhouse at Quail Lodge, Inc. The limit is now 334 seats maximum.

This Water Use Credit may be applied to future water use on that site until February 4, 2013. After that date, any unused Water Use Credit expires. This letter acknowledges that an extension of time to reuse a Water Use Credit has been granted.

The Water Use Credit shown in this letter is a final determination of the Water District's General Manager. Final determinations of the General Manager may be appealed to the District Board within twenty-one (21) days after any such determination pursuant to District Rule 70. For information about the appeal process, contact the District office.

This letter should be presented to the Water Management District to utilize the credit.

Sincerely,

A handwritten signature in black ink that reads "Michael Boles".

Michael Boles
Conservation Representative

Exhibit B



**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

5 HARRIS COURT, BLDG. G
POST OFFICE BOX 85
MONTEREY, CA 93942-0085 • (831) 658-5601
FAX (831) 644-9560 • <http://www.mpwmd.dsl.ca.us>

December 17, 2007

Lombardo & Gilles LLP
Quail Lodge Inc.
Post Office Box 2119
Salinas, CA 93902

Subject: Extension of Water Use Credit for Quail Lodge Inc. Carmel. APN: 157-031-014 and 022

Dear Mr. Lombardo:

In accordance with MPWMD Rule 25.5, the following Water Use Credit has been extended for 60 months at the site referenced above:

Credit of 5,230 acre-feet for the permanent removal of landscaping at the Lodge and Clubhouse at Quail Lodge, Inc. Any change to the size and type of landscaping requires review by the District.

This Water Use Credit may be applied to future water use on that site until February 4, 2013. After that date, any unused Water Use Credit expires. This letter acknowledges that an extension of time to reuse a Water Use Credit has been granted.

The Water Use Credit shown in this letter is a final determination of the Water District's General Manager. Final determinations of the General Manager may be appealed to the District Board within twenty-one (21) days after any such determination pursuant to District Rule 70. For information about the appeal process, contact the District office.

This letter should be presented to the Water Management District to utilize the credit.

Sincerely,

A handwritten signature in cursive script that reads "Michael Boles".

Michael Boles
Conservation Representative

MONTEREY COUNTY

WATER RESOURCES AGENCY



PO BOX 830
SALINAS, CA 93902
(831) 755-6860
FAX (831) 424-7825

CURTIS V. WEEKS
GENERAL MANAGER

RECEIVED

FEB 22 2008

STREET ADDRESS
898 BLANCO CIRCLE
SALINAS, CA 93901-4455

January 30, 2008

MPWMD

Dennis Beougher
Lombardo & Gilles, LLP
318 Cayuga St.
Salinas, CA 93901

RE: Carmel Valley Ranch Water Allocation; PLN 020280

Dear Mr. Beougher:

The Monterey County Water Resources Agency (Agency) continues to hold 8.807 acre feet of water for the proposed 12-lot subdivision at Carmel Valley Ranch. As you are aware, the Agency does not track actual water use upon buildout.

If you have any questions, please do not hesitate to call.

Sincerely,

Curtis V. Weeks
General Manager

h:\data\dev_rvw\docs\2008\1a-rcarmelvalleyranch\LE.doc

Monterey County Water Resources Agency provides flood control services and manages, protects, and enhances the quantity and quality of water for present and future generations of Monterey County.

TOTAL P.02

Exhibit C



**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

RECEIVED
OCT 20 2005

5 HARRIS COURT, BLDG. G
POST OFFICE BOX 85
MONTEREY, CA 93942-0085 • (831) 658-5601
FAX (831) 644-9558 • <http://www.mpwmd.dst.ca.us>

October 19, 2006

Miriam Schakat, Esquire
Lombardo & Gilles
Post Office Box 2119
Salinas, California 93902-2119

**Subject: Water Use Credit Application for Carmel Valley Ranch (APN 416-422-010 and
416-529-023)**

Dear Miriam:

This letter responds to a Water Use Credit request for removal of irrigated landscaping around the lodge and hotel units at Carmel Valley Ranch, Carmel Valley. This letter also addresses a request for Water Use Credits for installation of toilets using a maximum of one gallon per flush in the 144 resort lodge rooms, and several other issues related to compliance with District regulations at Carmel Valley Ranch.

Landscaping

To determine the potential water credit for landscape removal, the District staff agreed to review the water needs of the existing landscaping against the water needs of proposed landscaping. Ideally, the District staff wanted to review the original landscape and irrigation plans. It is our understanding that the original plans could not be located. Instead, drawings of the existing landscaping were prepared and compared against a landscape plan for the proposed project. You submitted water budgets for the existing and proposed landscaping completed by Landscape Architect Michael Bellinger.

District staff member Rob Cline, a Certified Landscape Irrigation Auditor, reviewed the landscape plans and the water use calculations provided. Rob also visited the site with you and the head groundskeeper to examine the existing landscaping. Based on his review of documents you submitted and site observations, Rob has recommended using an average plant species coefficient of 0.5 (0.1 being very low water needs, 1.0 being very high) in calculating the current and proposed applied water estimates. It is also his professional opinion that it is not appropriate to adjust the microclimate factor or density factor (two other derivatives of the landscape coefficient), as these factors vary considerably by season and maintenance practices. Finally, Rob has indicated that use of the Maximum Applied Water Allowance (MAWA) is inappropriate for existing landscaping. Therefore, this response was prepared using the Estimated Applied Water (EAW) for both the existing and proposed conditions, which is a more accurate long-term representation of water use following establishment. It should also be noted

that the annual Average Reference Evapotranspiration (ET_o) for this site is 46.3 inches (i.e. ET_o Zone 3, coastal valleys and plains and north coast mountains), rather than 48.5 inches (CIMIS data from a station in the more arid Arroyo Seco region) as Mr. Bellinger used on the water calculations shown on the plans. The average annual rainfall for the Monterey region is 19.62 inches. Rainfall at Carmel Valley Ranch area is approximately one to two inches higher. The District staff's calculations reflect the information contained in this paragraph. Rob's detailed analysis is available upon request.

The landscape plans submitted to the District in September 2006 indicate that there will be a reduction of 5,591 square-feet of landscaped area. Using the prescribed method of the State Model Landscape Ordinance (and the information provided in the previous paragraph) to determine the EAW for the existing and proposed landscaping, District staff calculated:

Existing EAW = 3,071,175.8 gallons annually or 9.425 AFA

Proposed EAW = 2,973,329.9 gallons annually or 9.125 AFA

These numbers reflect the average coefficient. However, by improving the efficiency of the landscaping, it is possible to considerably reduce water use and reduce the coefficient. To achieve this as a permanent reduction in use as required by District Rule 25.5, the following conditions will be required, and a lower plant species factor will be applied to the proposed project's water use calculations, achieving an EAW of 2.18 AFA. The difference between existing EAW (9.925 AFA) and the reduced demand EAW of 2.18 AFA represents a savings of approximately 7.245 AFA. To achieve this reduction, the following District Water Use Credit approval conditions will be required:

1. Proper design, installation and maintenance of a new irrigation system.
2. Proper hydro-zoning of plants; grouping plant varieties together with other plants with similar water needs.
3. Installation and permanent use of a real-time, weather-based irrigation controller serving all irrigated areas. *Note: The requirement for "real-time" weather data controller is a key component in this approval. District staff is available to verify that the proposed controller meets this requirement.*
4. There shall be a dedicated water meter(s) for all landscape irrigation. *The District understands that there are at least five water meters serving the Lodge Resort parcel. Prior to issuance of a water credit, provide the District with information for each meter, including the location of the meter, the specific uses and location of the uses on that meter.*
5. Generous use of mulch throughout the landscaped areas.
6. No new additions of landscaped area.
7. No addition of plants having a higher species coefficient than 2.0. *Prior to issuance of a water credit, provide the District with a complete list of plant names, photos and documentation that they meet the maximum 2.0 coefficient standard.*
8. The property owner shall implement a water education program for landscapers, gardeners and other employees who maintain or care for landscaping, including education about the District's

water waste restrictions and clear direction that all irrigation to landscaping approved as a result of this credit request is to be done using the installed irrigation system and not by hand watering.

9. The property owner shall implement a permanent training program on the proper use of the real-time weather-based irrigation controller for all employees who maintain the landscaping.

In addition, the District will record the following three deed restrictions on the property:

1. Notice and Covenant Regarding Limitation on Use of Water on a Property. This document will list the specific conditions related to the proposed landscape credit as discussed in the previous bullet points.
2. Notice and Covenant to Provide Public Access to Water Use Data. This document provides authorization to retrieve, collect, compile and report actual water use data for a specific property. Obtaining this authorization releases the District from the restrictions of the Non-Disclosure Agreement between the District and California-American Water Company (Cal-Am).
3. Notice and Covenant of a Modified Non-Residential Water Use. This document provides notice that the user has a reduced water capacity that resulted in documentation of a Water Use Credit and that the user is hereafter identified as a Non-Residential Group IV on the District's Table 2: Non-Residential Water Use Factors.

Please notify the District in writing if your client accepts or disagrees with this proposed credit and conditions. If your client agrees with the District staff's analysis and proposed Water Use Credit, your letter should also withdraw your appeal of the General Manager's May 26, 2006 denial of credit, as the issue would be moot. If you disagree with our analysis, please provide substantial written comments to explain your position. Please provide written responses to the questions asked in this letter prior to the final issuance of a Water Use Credit. A final Water Use Credit will be issued following receipt of a completed Water Use Credit Application for this request, completion of the landscaping as reflected in the Carmel Valley Ranch landscape plans dated August 28, 2006, and following recordation of the appropriate deed restrictions and verification of compliance with the conditions of approval listed in this letter. Any modification to these plans will void the current analysis. This District analysis is time-sensitive, therefore District staff reserves the right to alter its conclusion based on changed conditions if the proposed retrofitting is not undertaken within the next six months.

Hotel Room Toilet Retrofit

The District also received your request to review a proposed Water Use Credit for permanently replacing 1.6 gallons-per-flush (gpf) toilets in the 144 lodge rooms with 1.0 gpf toilets. Your consultant, Roger Fry, of Camp Dresser McKee, responded with his conclusion that water savings of 0.95 AFA could be achieved. His analysis was based on 14 flushes per day (7 flushes per day, per person x 2 people per room) as the average number of hotel room toilet flushes. He supported this number by backing out sewage flow as estimated in Monterey County Zoning Ordinance, Title 15. He also references a study done for the City of Santa Barbara that broke down interior use and the percentage of interior use by toilets. The Santa Barbara study was done in the early 1980's and is considered by District staff to be obsolete as the work pre-dates the installation of water-saving technology.

District staff pursued verification of the "flush per day" theory. The number of visitors per hotel room probably averages less than 2 per night, although it was not possible to find a standard number in the sources reviewed by staff. In the City of San Francisco, the average is 1.77 persons per room per night (San Francisco Convention and Visitors Bureau, 2005). Further information on the average number of guests per room is needed to complete this water savings estimate. Average annual room occupancy at the Ranch should also be factored into the savings estimate. Please provide these numbers to the District (along with supporting documentation), and the water credit will be calculated using the savings per flush (0.6 gpf) at 7 flushes per guest per day, adjusted for occupancy.

A Water Use Credit for permanently retrofitting from 1.6 gpf to 1.0 gpf will require the recordation of the same deed restrictions discussed under the landscaping heading. In addition, please submit a completed Water Use Credit Application for this request.

Carmel Valley Ranch Water Permit

The water permit issued for construction of the Lodge Resort (#5969) was issued on July 7, 1986 for 23.011 acre-feet of water. This included 100 hotel rooms and 125 restaurant seats. Landscaping was not given a separate calculation, but was considered an "associated use" and was included in the hotel and restaurant factors. The pools, spas and retail uses were not included on the original or subsequent water permits. This last fact appears to have been caused by District staff error, thereby not requiring adjustment at this time. A water permit was issued in 1997 for 44 new hotel rooms, bringing the total to 144. No other water permits for intensifications in use have been issued.

As part of the review process for the requested water credits, District staff reviewed the original construction drawings against the existing conditions. It was during this review that the discrepancy in the pools and spas was noted. One other discrepancy was noted: The Lodge Resort restaurant seating has increased since the original water permit was issued in 1986. According to the September 20, 2006 inspection conducted by District staff, the number of restaurant/bar seats in the lodge totaled 141. Therefore, a water permit is required for the additional seating. Please obtain a water permit for 16 restaurant seats on the Lodge parcel. A water credit (or County allocation debit) in the amount of 0.32 AFA is needed to permit this use. An alternative variable to you would be to offset this 0.32 AFA against the proposed landscape water credit, yielding a net landscape water credit of 6.925 AFA.

Golf Clubhouse

A similar situation was noted at the Golf Clubhouse. The District was asked to review the plans for an interior remodel. In doing so, the District reviewed records from the Monterey County Environmental Health Department to determine the appropriate number of restaurant/bar seats. The County's Health Department Permit No. FA0811477 allows between 50 and 149 seats. The information submitted by your office indicated that the existing seating was 180, and that the seating will be reduced to 145 in the dining area with occupancy of 65 in the member lounge. Your estimate did not count the member lounge seats as restaurant seats, as they should be. Therefore, the Clubhouse must either reduce its total number of seats to a maximum of 149, in keeping with the Health Department permit, or you need to obtain a water permit for the additional seating.

Please apply for a water permit for the additional seating or reduce the seating to comply with the Health Department permit. As the construction of the Clubhouse predates the District's permit process, the District is relying on the seating count permitted by the County as the baseline for determining future permit requirements.

Documentation of Credit

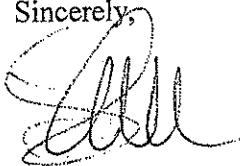
Documentation of Water Use Credits will be granted following verification that the conditions associated with each retrofit have been met and that the Lodge Resort is in compliance with all District requirements. As a result of the District's inspections, the following items were noted as being out of compliance with District law:

1. Water conservation signs must be posted in all restrooms and kitchen areas;
2. Three handicapped-height toilets in the public restrooms are not designed to flush with 1.6 gpf. These toilets must be replaced and reinspected.

Please contact the District for an inspection upon completion of the permanent reductions in use and as the noncompliant items are addressed. Prior to issuing any Water Use Credit, the District will require recordation of the noted deed restrictions on the title of the property. Staff will require several documents to prepare the deed restrictions. Please provide copies of Articles of Incorporation (i.e. operating agreement), and Restated Bylaws, and Resolution of the Board of Directors for Carmel Valley Mortgage Borrower L.L.C. The deed restrictions must be signed, notarized, and returned to the District for recordation with Monterey County Recorder's Office. Legal review and recordation fees will need to be collected before the District can issue a documented Water Use Credit.

If you have any questions, please call me at the Permit and Conservation Office at 658-5601.

Sincerely,



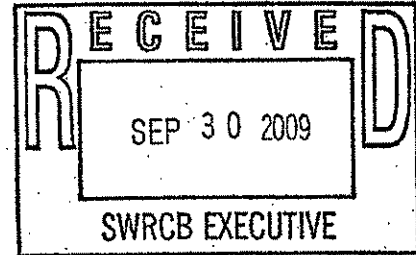
Stephanie Pintar
Water Demand Manager

cc: David A. Berger, General Manager



September 30, 2009

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



Re: Comment Letter – 10/20/09 Board Meeting Cal Am CDO

Dear Chair Charles Hoppin and Board Members:

The Monterey County Hospitality Association urges that you not adopt the draft Cease and Desist Order against California American Water Co. issued September 16, 2009.

The State Water Resources Control Board should take into account, as a matter of reasonable and responsible public policy, that the Cal Am service area will have a new water supply source within a short period of time. The broad community consensus supporting the regional water supply project, an alternative to Cal Am's Coastal Water Project, is an historic first; the cooperative agreements of Marina Coast Water District, Monterey Regional Water Pollution Control Agency, and Monterey County Water Resources Agency are also historic firsts, as we mentioned in our previous comment letter (a copy of that letter of August 26th is attached for reference). In our view, SWRCB should defer action on water cutbacks or other action against Cal Am, and by implication against the community served, until 2012, the earliest date a new water supply sufficient to eliminate Cal Am's overpumping of the Carmel River can be realized.

Our reasons for opposing adoption of the CDO are as follows:

- ✓ The water reductions in the CDO threaten public health and safety;
- ✓ The water reductions in the CDO jeopardize the viability of the Hospitality Industry;
- ✓ The CDO does not properly or adequately take into account water reductions ordered by the Seaside Basin Watermaster;
- ✓ The CDO assumptions about water savings from various small water projects are flawed and unrealistic;
- ✓ The CDO assumptions about water supply and water needs being in 'rough equilibrium' are flawed or erroneous;

- ✓ The proposed water reductions are a punishment of area residents, businesses and local governments that have already accomplished dramatic water use conservation;
- ✓ The CDO does not take into account the 'facts on the ground' re development of a replacement water supply;
- ✓ The CDO does not adequately analyze the trade-off between water available for community use against the marginal benefits to threatened Carmel River species or the marginal benefits to public trust resources generally.

In short, the CDO would cause enormous harm to the residents and businesses of the Monterey Peninsula. The CDO should not be adopted.

THE DRAFT CDO THREATENS PUBLIC HEALTH AND SAFETY

The California Public Utilities Commission informed you in its letter to you for the September 2nd workshop on the July 27th draft CDO that water use within the Cal Am service area is the lowest of any California regulated public utility. The Monterey Peninsula Water Management District has provided you with testimony, exhibits and comments detailing the area's frugal water use. MCHA and other parties and commenters have noted the facts of low water use in the area, which is among the lowest in the state. The prosecution team addressed the issue of what level of water availability is necessary before public health and safety is threatened; the CDO essentially ignores the evidence in the record and furnished in comments. Cal Am service area residents, businesses and municipalities have worked hard with great success to reduce water consumption; it is questionable given the facts and evidence in the record how much more reasonably can be accomplished. The public health, safety and welfare should be the primary consideration for the SWRCB and it is clear the water reductions in the CDO would threaten public health and safety.

THE DRAFT CDO JEOPARDIZES THE VIABILITY OF THE HOSPITALITY INDUSTRY

MCHA has provided you with testimony, exhibits and comments detailing the precarious state of the Hospitality Industry in Monterey County, 90% of which is within the Cal Am service area. Occupancy is extremely low; the latest occupancy data from Smith Travel Research are attached. The rolling twelve-month average occupancy is 57.6%, which is well below the 60% necessary for minimum viability. The CDO would reduce water availability to a level that would make it impossible for the industry to recover and reach even minimum viability levels. Because the Hospitality Industry has strongly embraced water conservation over the last decade, the only options, beyond accomplishing further marginal water savings, are closing of lodging rooms, shutting off food service seats and facilities, and laying off substantial numbers of workers. The Hospitality Industry is the area's principal economic driver; the measures the industry will have to take in response to the draft CDO will harm the local economy, harm hundreds of families,

and harm local governments because of reduced Transient Occupancy Tax and local sales tax revenues.

**THE DRAFT CDO DOES NOT PROPERLY OR ADEQUATELY TAKE INTO ACCOUNT
SEASIDE BASIN WATER REDUCTIONS**

The water cutbacks in the CDO, by themselves, are serious and threaten public health, safety and welfare but the CDO does not analyze the effects on the communities, residents and businesses in the Cal Am service area of the combined CDO cutbacks and Seaside Basin cutbacks and does not acknowledge that Seaside Basin cutbacks will continue and increase over time, as per the order of the Seaside Basin Watermaster. This omission of analysis of the combined water cutbacks and the implications of the combined water cutbacks for public health, safety and welfare is a fatal flaw and no order should issue without such analysis.

**DRAFT CDO ASSUMPTIONS ABOUT WATER SAVINGS FROM 'SMALL PROJECTS' AND
OTHER MEASURES IS UNREALISTIC**

The CDO states that small water projects and measures such as leak elimination, (presumably) increased retrofitting, elimination of outdoor irrigation, and (presumably enhanced) demand management "should" offset water supply reductions from the CDO and from the Seaside Basin adjudication. These assumptions are not supported by any evidence, consequently are mere speculation by the architects of the CDO. Further, the same measures are counted twice as a means by which the community will adjust to CDO reductions and to Seaside Basin reductions. The posited savings are not realistic or reasonable. This bears directly on the question of public health, safety and welfare. Such reliance on uncertain approximations is also a fatal flaw.

The CDO assumption that water supply and water needs are in rough equilibrium is flawed

The CDO states that water supply and water needs are in rough equilibrium (second paragraph on page 52) but does not take into account the effects of the current recession or the effects of the 9-11 attacks on the Hospitality Industry. Current water use is depressed. Thus the 'equilibrium' statement is seriously misleading. Current levels of use, even if averaged over the last nine years, are not an indicator of future needs and should not be used as they are in the CDO.

**THE CDO REDUCTIONS PUNISH RESPONSIBLE WATER USERS -
RESIDENTS, BUSINESSES AND LOCAL GOVERNMENTS**

The CDO cutbacks pose a serious threat to public health, safety and welfare to area residents, businesses and local governments that have worked hard to accomplish dramatic water conservation. It seems preposterous to punish the Peninsula for doing a better job of responsible water use than virtually any other area of California. To speculate, as the CDO does, that the drastic cutbacks will provide area residents motivation for accomplishing a water supply project is unsophisticated nonsense.

**THE CDO DOES NOT REFLECT 'FACTS ON THE GROUND' RE
DEVELOPMENT OF A NEW WATER SUPPLY**

As we mentioned in our comments on the July 27th draft CDO, our area has never been closer to achieving a new water supply. CPUC recently announced a final EIR on Cal Am's Coastal Water Project and its alternatives will be released in October 2009 and certified in January of 2010. The Marina Coast Water District is ready to begin a desal plant as soon as the EIR is certified. MCWD and its consulting engineer state that the desal plant can be completed and operational by 2012. The desal plant will have sufficient capacity to eliminate overpumping of the Carmel River.

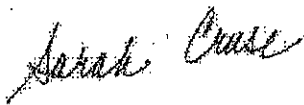
**THE CDO DOES NOT ANALYZE THE HARM TO AREA RESIDENTS, BUSINESSES AND LOCAL
GOVERNMENTS COMPARED TO THE MARGINAL BENEFITS TO PUBLIC TRUST RESOURCES**

SWRCB received significant evidence, testimony and comment on the significant harm the CDO would impose on area residents, businesses and local governments. The CDO provides no analysis of the marginal benefits of the cutbacks on public trust resources. As noted in Order 95-10, there are trade-offs involved between the jeopardy to the community and the assumed benefits of cutbacks to public trust resources. The fact that there is no such analysis in the CDO is another fatal flaw.

Summary

SWRCB can avoid the jeopardy posed by the CDO and the certainty of harm to public health, safety and welfare by not adopting the draft CDO and deferring any action against Cal Am until 2012. Nothing short of this is reasonable or responsible.

Sincerely,



Sarah Cruse, President

Attachments:

MCHA comment letter of August 16, 2009
Smith Travel Research report on Monterey County occupancy for August 2009

August 26, 2009

Charles Hoppin, Chair
State Water Resources Control Board
Joe Cerna Jr./Cal-EPA Building
1001 I Street, Second Floor
Sacramento, California 95814

Re: July 27th Draft Cease and Desist Order WR 2009-00XX Workshop September 2, 2009

Dear Chair Hoppin and Members, State Water Resources Control Board:

The Monterey County Hospitality Association (MCHA) opposes adoption of the July 27, 2009 draft Cease and Desist Order (CDO) against California American Water Company (CAW).

MCHA is an interested party in the proceedings arising from the draft CDO issued in January 2008 and participated in the proceedings by submitting testimony and exhibits, and by cross-examining witnesses.

Our contention was, and is, the water supply cutbacks proposed in the draft CDO present a dire threat to our industry and therefore a threat to public health and safety because of the grave jeopardy to the local taxes our industry generates (upwards of \$55 million) and the imminent threat to local employment (our industry employs 23,000, mainly within the CAW service area). The hospitality industry is the major economic driver for the Monterey Peninsula. We testified that our industry could survive a 5% reduction in water supply but that any reduction beyond that would necessitate closing lodging rooms or restaurant tables which would ipso facto reduce the local tax revenues we generate, the number of workers we employ, and reduce the competitiveness of our industry, which would make surviving difficult or impossible, and further depress the Peninsula economy, leading to more losses in local tax revenues and jobs.

We testified during the 2008 hearings that occupancy levels in lodging facilities were extremely low; the latest figures from Smith Travel Research indicate that current occupancy is lower still and at near historic lows (for the three months through July 2009, occupancy is down 10% from the already low levels in 2008 per Smith Travel Research). This means water use is down because of the lower level of visitors. Cutting back on water availability at this time will make it virtually impossible for the hospitality industry to recover from the economic downturn; this would have a domino effect on local tax revenues, local employment and the general health of the Peninsula economy.

Our further contention is the draft CDO contains confusing mistakes in arithmetic (differences in amounts listed as average pumping in excess of legal limit on pages 32, 38 and 56; differences in CAW water rights figures on pages 5, 35 and 38; difference in amount subtracted from legal supply number due to siltation on pages 5 and 35 and others) and relies on flawed logic, which

we explain below. We leave it to CAW and others to point out the flawed assumptions of achievability or practicality of the incremental annual reductions in the draft CDO.

Punishing CAW or CAW's customers?

Water conservation on the Peninsula has been extraordinary, but the CDO seeks to punish CAW's customers. Evidence was submitted in the CDO hearings about Peninsula water savings accomplished since Water Rights Order 1995-10 (95-10, or WR 95-10) issued. The prosecution submitted testimony that achieving a residential water use level of 75 gallons per person per day would not, according to the California Code of Regulations, jeopardize public health or safety. Evidence was submitted by CAW and the Monterey Peninsula Water Management District (MPWMD) that a) Peninsula use is already at or below that level and b) Peninsula per capita water use is already among the lowest, if not the lowest, in California. Since the Peninsula will have to adjust to the reductions of water supply ordered by the Seaside Basin Watermaster, our per capita use will go lower without additional cutbacks imposed by a CDO. 95-10 instructed CAW to maximize its Seaside Basin pumping to offset the ordered Carmel River pumping reductions; the adjudication of the Seaside Basin with its establishment of pumping restrictions has frustrated that instruction. The draft CDO acknowledges the fact of the adjudication, and the Watermaster-ordered pumping reductions, but does not take the combination of reductions into realistic or proper account in terms of public health and safety or in terms of achievability in the short term. The combined reductions are the "immediate and substantial reduction(s)" the draft CDO says would be an "unacceptable risk" or threat to public health and safety (p. 48).

It would be arbitrary and arbitrarily punitive to penalize the residents and businesses of the Peninsula, who have done an extraordinary job of reducing water use, by imposing additional cutbacks of the magnitude outlined in the draft CDO. If the CDO were to be adopted as written, the reduction in water supply over the next two years would be 1,115 acre feet (AF), the combined total of the immediate reduction in the base from 11,285 acre feet annually (AFA) to 10,978 AFA (307 AF), immediate reduction of 5% of the new base (549 AF), the annual reductions for the next two years (121 AF each year), and the cutbacks ordered by the Seaside Basin Watermaster (417 AF). This is far in excess of the 5% reduction we testified our industry could adjust to and a far quicker reduction than we contemplated when we testified.

Immediate reduction of Carmel River pumping base is arbitrary, leads to complications

WR 95-10 established a Carmel River pumping base of 11,285 AFA after the two cutbacks in that order. The draft CDO would immediately reduce that base to 10,978, or 307 AFA less. Changing the base would complicate the conservation efforts of CAW and MPWMD and entail revisions of conservation rules and rationing plans adopted by both by requiring rewriting of the rules and reeducation of the public in order to achieve any success.

As the CDO correctly notes (p. 48), conservation efforts depend for success on public education and cooperation. As we testified in the hearings, MCHA was the primary private sector organization working with CAW and MPWMD to achieve the level of education and cooperation that resulted in the water savings already achieved. That was not an easy task and it took years of hard work to make area water users that a regulatory reduction in supply is just as real as a

reduction in supply resulting from drought. Requiring a revision of the conservation rules to 'save' 307 AFA immediately is arbitrary and not realistic; the amount of work changing rules and reeducating water users is enormous and the water savings, by comparison, are not substantial.

Policy acknowledgement of a new water supply, implications for CDO timetable

During the hearings some evidence was offered about how close the Peninsula might be to realizing a new source of water that could legalize the Peninsula's water supply. SWRCB should at least take policy notice of how the possibility of a new supply has come closer and even more realistic.

Three responsible agencies (Marina Coast Water District, Monterey County Water Resources Agency, and Monterey Regional Water Pollution Control Agency) have signed agreements to cooperate in planning new water projects. The California Public Utilities Commission recently adjusted its schedule for finalizing the Environmental Impact Report of CAW's Coastal Water Project and the identified and studied alternatives to January 2010; a finalized and adopted EIR will provide the basis for the three agencies to begin the process of developing water supply projects, particularly a desalination plant to legalize CAW's water supply.

In light of these facts, it seems capricious for SWRCB to impose drastic pumping reductions immediately and even more gradually knowing that substantive water replacement cannot possibly begin before 2016. If the underlying theory is that immediate drastic reductions combined with the more gradual annual reductions will provide an incentive for the area to embrace a new water supply project, it is a flawed theory. The pumping cutbacks in the draft CDO combined with the Seaside Basin cutbacks will only engender anger and resentment, and quite likely resistance to necessary cooperation. As we testified during the hearings, we have been involved for the last two decades in every reasonable effort to secure a new water supply and for the last decade in achieving Peninsula water conservation success; we are, as a consequence, quite familiar with public sentiments and attitudes on water issues.

If a CDO must be issued, it should be more realistic

We have outlined why we believe the CDO should not be issued.

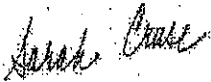
If the SWRCB believes a CDO should be issued, we urge that it be more realistic than the draft CDO at issue now. A CDO should:

- Not order a reduction in the Carmel River base pumping;
- Not order immediate drastic reductions in Carmel River pumping that, when combined with Seaside Basin reductions, pose an immediate and "unacceptable" threat to public health and safety;
- Take into account the substantive progress being made on development of a new water supply and calibrate any pumping reductions to a timetable reflecting a realistic estimate of when replacement water should be available; if necessary, a CDO could indicate that its terms would be revisited after 2016;

- Calibrate pumping reductions to an amount of time necessary to develop the public understanding and cooperation necessary to achieve water use reduction success.

Thank you for the opportunity to participate in the proceedings and to make our comments on the draft CDO. We will attend the September 2nd workshop and will be pleased to answer any questions SWRCB might have.

Sincerely



Sarah Cruse, President

Tab 2 - SegTrend Monterey County, CA

Monterey Co. CVB
 For the Month of August 2009

Current Month		Occupancy (%)			Total	
		Trans.	Grp.	Con.		
2008	Mar	40.6	21.9	0.5	63.0	
	Apr	37.6	28.2	0.4	66.3	
	May	37.6	28.2	0.4	66.3	
	Jun	45.5	27.0	0.4	72.9	
	Jul	52.2	27.0	0.4	79.7	
	Aug	39.3	26.7	0.7	66.7	
	Sep	39.3	26.7	0.7	66.7	
	Oct	30.8	19.1	0.7	50.6	
	Nov	30.8	19.1	0.7	50.6	
	Dec	22.2	18.4	0.7	41.3	
	2009	Jan	22.2	18.4	0.7	41.3
		Feb	33.0	16.4	0.9	50.4
Mar		33.0	16.4	0.9	50.4	
Apr		38.5	17.8	0.8	57.0	
May		38.5	17.8	0.8	57.0	
Jun		51.7	22.2	0.4	74.3	
Jul		51.7	22.2	0.4	74.3	
Aug		37.0	28.2	1.4	66.7	
Year To Date						
2007	Aug	37.0	28.2	1.4	66.7	
2008	Aug	39.7	18.4	0.6	58.7	
2009	Aug	39.7	18.4	0.6	58.7	
Running 12 Month						
2007	Aug	35.5	27.3	1.4	64.3	
2008	Aug	37.7	19.2	0.6	57.6	
2009	Aug	37.7	19.2	0.6	57.6	

Source 2009 Smith Travel Research, Inc.