

August 15, 2016

Ms. Barbara Evoy  
Deputy Director, Division of Water Rights  
State Water Resources Control Board  
PO Box 2000  
Sacramento, CA 95812-2000

Subject: Orders WR 2016-0016 and WR 2009-0060

Dear Ms. Evoy:

The Monterey Peninsula residents and businesses appreciate the Division of Water Rights' work to amend Order WR 2009-0060 that resulted in the State Water Resources Control Board's (Board) July 19<sup>th</sup> adoption of Order WR 2016-0016. Order WR 2016-0016 continued in effect the 2009 order's Condition 2. As you know, Condition 2 imposed a moratorium on additional connections to California American Water's (Cal-Am) system and addressed water use that may occur through changes in land use. Consistent with direction the Board provided at its July 19<sup>th</sup> meeting regarding how Condition 2 works at a practical level, this letter proposes how we, Cal-Am and the Board can work under Condition 2 to continue reducing water use from the Carmel River, while at the same time, maintaining our community's economic vitality.

For ease of reference, Condition 2 reads, in relevant part: *Cal-Am shall not divert water from the Carmel River for new service connections or for any increased use of water at existing service addresses resulting from a change in zoning or use.*

### **Our Common Goals**

Our proposal to interpret Condition 2 is guided by the following goals:

- Support the normal evolution of the Monterey Peninsula's economy and business community while maintaining our commitment to the moratorium on new Cal-Am service connections until the cease and desist order is lifted.
- Assure the Board that economic development is not promoted at the expense of the overarching effort to end unlawful diversions from the Carmel River consistent with Order WR 2016-0006;
- Provide objective rules for Cal-Am to follow under Condition 2, so that Cal-Am and the public have certainty about the requirements of Condition 2.
- Provide Monterey Peninsula businesses, residents, and governmental agencies a clear, predictable, and objective set of rules upon which to make long term plans and investment decisions and to not penalize those who have already made such investments .
- Place into the public record a concise and clear interpretation of Condition 2.

## **The Current Dilemma**

The key issue is clarifying how Condition 2 should apply to everyday changes in businesses and business locations that occur as local economies evolve. Our experience since 2009 has been that it is possible for these changes to occur under the Monterey Peninsula Water Management District's (District) water permit rules while significantly reducing demand on the Carmel River. We are committed to implementing local water conservation rules, technologies and rate structures to continue to promote water use reductions across the Monterey Peninsula. As it stands now, however, interpretations of Condition 2 can create significant uncertainty for landowners, businesses and local agencies that are considering projects that would involve different uses of existing developed properties.

This uncertainty can arise in a number of ways. A land use change may involve an interpretation of a broadly-worded zoning designation so that is not clear whether the change would be "change in zoning" under Condition 2. A change in a business on a property may involve water demand within historical water use on the property and may be within the property's zoning designation, but may involve a different kind of commercial use under the District's permitting rules. Those rules, however, exist for a different purpose – namely, to allocate water among thousands of parcels on the Monterey Peninsula. Mixed-use projects like those that are favored in many places to reduce commutes and provide more affordable housing may involve blends of commercial and residential uses that did not exist on a property previously. Access to Cal-Am's billing records for any given property may be limited by privacy rules. A prospective buyer of a business or property may be unable to access prior water use information to make an informed decision as to the value of a building, or what potential uses can be supported, especially if the building has gone through several ownership changes. Similarly, water use data is not available to land use agencies, which complicates CEQA compliance and permitting.

## **A Recommended Approach**

Rather than attempt to disentangle all of the variations in "changes in use" that would be possible on the Monterey Peninsula, we propose that the Board clarify the portion of Condition 2 concerning "increased use of water at existing service addresses." For the reasons set forth in comment letters that addressed Condition 2, we respectfully request that the Board clarify Condition 2 by interpreting it as proposed below, consistent with the District's permit rules. In this regard, we propose the Board confirm, by letter to Cal-Am and the District, such an interpretation of Condition 2. That letter should state Condition 2 is to be interpreted so that "increased use of water at existing service addresses" under Condition 2 shall mean:

An increase in capacity to use water at an existing site in excess of the historical capacity to use water documented by the Monterey Peninsula Water Management District. Documented historical capacity to use water may include capacity to use water from another site or jurisdictional allocation of water so long as the documented capacity from such other source is reduced by a like amount.

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In an effort to provide coordinated comments from stakeholders, the comments and recommendations contained in this letter reflect extensive consultations and discussions with the Monterey Peninsula Cities and County, the Monterey County Hospitality Association, the Monterey Peninsula Chamber of Commerce, Cannery Row Company, Domaine Hospitality, the Monterey Bay Aquarium and the Monterey Plaza Hotel in addition to other stakeholders that provided comments at the Board's July 19<sup>th</sup> meeting.

Thank you for your consideration of this request for clarification.

Sincerely yours,

Monterey Peninsula Water Management District

Monterey Peninsula Regional Water Authority

California American Water Company

The Coalition of Peninsula Businesses

L081516 Community Letter on Condition 2 final

Cc: Monterey Peninsula Cities and County  
Monterey County Hospitality Association  
Monterey Peninsula Chamber of Commerce  
Cannery Row Company  
Domaine Hospitality  
Monterey Bay Aquarium  
Monterey Plaza Hotel