March 27, 2017

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

Re: MPWMD Proposal To Alter Condition 2 of WRO 2009-0060.

Mr. O'Hagan,

Approximation of use is not an accurate baseline:

MPWMD Rule 24 describes the District's methodologies (residential and commercial) for estimating a site's approximate annual "Water Use Capacity". Both are ultimately calculated in acre-feet. Water allocations are recorded and permits issued using these approximations and they form the basis for system wide accounting and management.

Webster defines baseline as: a line serving as a basis; especially one of known measure or position used to calculate or locate something.

Residential "fixture-unit counts" and commercial "use factors" are an approximation (fictitious use) not a baseline (known measured use). In all of the chain letters extoling the virtues of the MPWMD "framework" not a single one actually explains how an approximation of use can alone serve as an accurate baseline of past use or gauge any increase in actual use. Instead, they simply claim District rules alone are responsible for a purported 3,000 acre-feet of reduced pumping. Never mind that in the past seven years the reduction has only been 1,163 AF (see p. 6) or that the reduction in pumping is really due to the imposition and enforcement of a Cease and Desist Order, which includes Condition 2.

Further, boosting a site's "Water Use Capacity" by allowing: "paper water" transfers from another site, transfers from a jurisdiction's allocation, and activation of on-site credits (dormant use) completely destroys the concept of baseline and enforcement of Condition 2.

Enforcement is meant to be inconvenient:

The desire to relax the CDO even further is clearly evident in all of the letters received by the SWRCB from: Chambers of Commerce, Hotel Operators, Hotel Developers, Realtors, Bankers, Engineering Firms, etc. Surely this is further evidence that the enforcement of Condition 2 is actually working. This includes both the moratorium on new meters **and** the restriction on any increase in use prompted by a change in zoning or land use.

At the July 19, 2016 SWRCB CDO hearing I spoke during public comment and said that Condition 2 is an important reason as to why the peninsula has been so effective in reducing our consumption of unlawful water. Later on, during board discussion, Board Chair Marcus stated that she didn't want to see Condition 2 go away and that it was not an unusual enforcement tool. She also stated that Condition 2 was "meant to be inconvenient", especially in the context of an ongoing violation spanning over 20 years! Board Member Moore also acknowledged the importance of maintaining Condition 2, which focuses the community on working together. I completely agree with these and other comments made by the Board regarding Condition 2 and urge SWRCB staff to review the board discussion video. I also urge you to read my previous comment letters (6/1/2016 , 7/13/2016 , 9/7/2016 and 1/17/2017) regarding Condition 2 and local attempts to avoid compliance.

Some important District definitions

MPWMD Rule 11 defines “Site” and “Water Use Credit” as follows:

> “Site” shall mean any unit of land which qualifies as a Parcel 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) which have identical owners, and (3) have an identical present use; or (4) are an Accredited Institution of Higher Education Site, a Jurisdiction Site, or a Public School District Site. The term “Site” shall be given the same meaning as the term “Parcel”. *Added by Ordinance No. 60 (6/15/92); amended by Ordinance No. 121 (8/15/2005); Ordinance No. 176 (1/25/2017)*
>
> "Water Use Credit” shall mean a limited entitlement by a Person to use a specific quantity of water upon a specific Site. Water Use Credits shall be limited by time, and by other conditions as set forth in the District’s Rules and Regulations. *Added by Ordinance No. 60 (6/15/92)*

Rule 11 contains no definition for "On-Site Water Credits", however, MPWMD Rule 25.5-J states:

> "An On-Site Water Credit resulting from the non-permanent removal of a lawful use that occurred on or after March 1, 1985, may be applied to, and shall allow, the future reuse of that increment of water on that Site. A Water Permit for reinstating the former use shall be required and allowed."

Therefore, "On-Site Water Credits" represent "non-permanent removal of a lawful use" (dormant use) where "Water Use Credits" represent a permanent removal. Any "On-Site Water Credit" must be converted into a "Water Use Credit" before it can be transferred off-site. Regarding the “movement” of a Water Use Credit on a given site, MPWMD Rule 25.5-I-1 states:

> "Water Use Credits may be moved between one or more structures on the same Site or may be used to construct new uses on the same Site."

Thus 25.5-I-1 permits de-facto transfers between assessor’s parcels without CEQA review.

Activation of “On-Site Water Credits” (dormant use)

Because the District's proposal seeks to abandon any analysis of metered use, to establish a baseline of past use, it's impossible to say how much additional unlawful water will end up being consumed as the result of activating "On-Site Water Credits" (dormant use). The District's Jan 18, 2017 memo claims 26 AF but this is based on “expected” guesswork and approximations of use, not actual use. I believe there will be a flood of additional projects seeking to take advantage of the District's "local regulatory regime". This could easily boost unlawful use, currently limited by Condition 2, by as much as 150 AF. Without a baseline of past use and monitoring of post-project use, the District is effectively saying you'll never know, you just need to trust us.

The District even admits that the list of currently identified projects, which would activate dormant use, is incomplete:

> "With respect to On-Site Water Credits, it is challenging to determine the potential for projects that will seek to “reinstate” a water use capacity in the next 5 years".

One of the projects identified in the District's memo is Project Bella, a 225 room hotel covering nearly 5 acres in Pacific Grove. The project is hoping to use a 18.53 acre-feet On-Site Credit, much of which has not been in use since well before the 2009 CDO. Further, because of the District's definition of "Site", water from the demolished structures, located on one assessor's parcel, could be moved over to two current parking lots, located on separate assessor's parcels (across the street – see p. 5). Moving water around using the MPWMD definition of "Site" enables de-facto transfers without CEQA review and activating dormant use (post WRO 2009-0060) represents an intensification of use. The District's proposal, in the case of Project Bella, would mean dry parking lots get water.

The District's proposal seeks to eliminate an accurate pre-project past use baseline and means of determining a post-project increase above baseline, which can only be realized using water meter data. Further, because the District fails to provide any analysis of recent "wet water" demand at the sites it has identified, it's impossible for them to claim how much dormant use will end up being activated or that it will be a "de minimus" amount.

MPWMD Water Transfer Study

In his March 15, 2017 letter Mr. Stoldt claims:

> "Moving a potential use of water from one site to another results in a corresponding decrease in potential use at the prior site, hence no increase in the potential site".

This does not agree with a water transfer study (DCI Inc.) received by the District in June 2001. Indeed, the Analysis of Water Savings Associated with Documented Water Use Credits and Transfers concluded that water transfers for commercial use (based on actual meter data) led to a net increase of 18% on the donor and receiving sites.

Purported Permanent Forbearance

In the same March 15, 2017 letter Mr. Stoldt also claims:

> "In addition, the District has entered into agreements to fund local water projects which permanently forebear the use of potable water – the Pacific Grove and Del Monte Golf Course projects will come on line within a year and will forebear 135 AFA of current potable use."

First, I believe the number is actually 125 AFA (88 AF Pacific Grove local water project and 37 AF Del Monte Golf Course non-potable supply wells). Whatever the case, Mr. Stoldt's claim regarding a substantial and permanent forbearance is not in agreement with the facts, especially since the District has already created an entitlement for the "saved" potable water freed-up by the Pacific Grove project (see MPWMD Ord. 168). Indeed, Pacific Grove received 66 acre-feet with the District appropriating 9 acre-feet of past potable use from the SWRCB funded Pacific Grove project.

Without the intervention of the Sierra Club, Carmel River Steelhead Association, Surfrider, Land Watch and concerned citizens' like myself, the District was even prepared to ask the CPUC for an exception to the CDO's moratorium on new meter connections for delivery of the water freed-up by the Pacific Grove project. In the audio recording of their March 17, 2015 Water Supply Committee, District staff clearly describes this as being their "plan", which certainly never contemplated any "permanent forbearance".

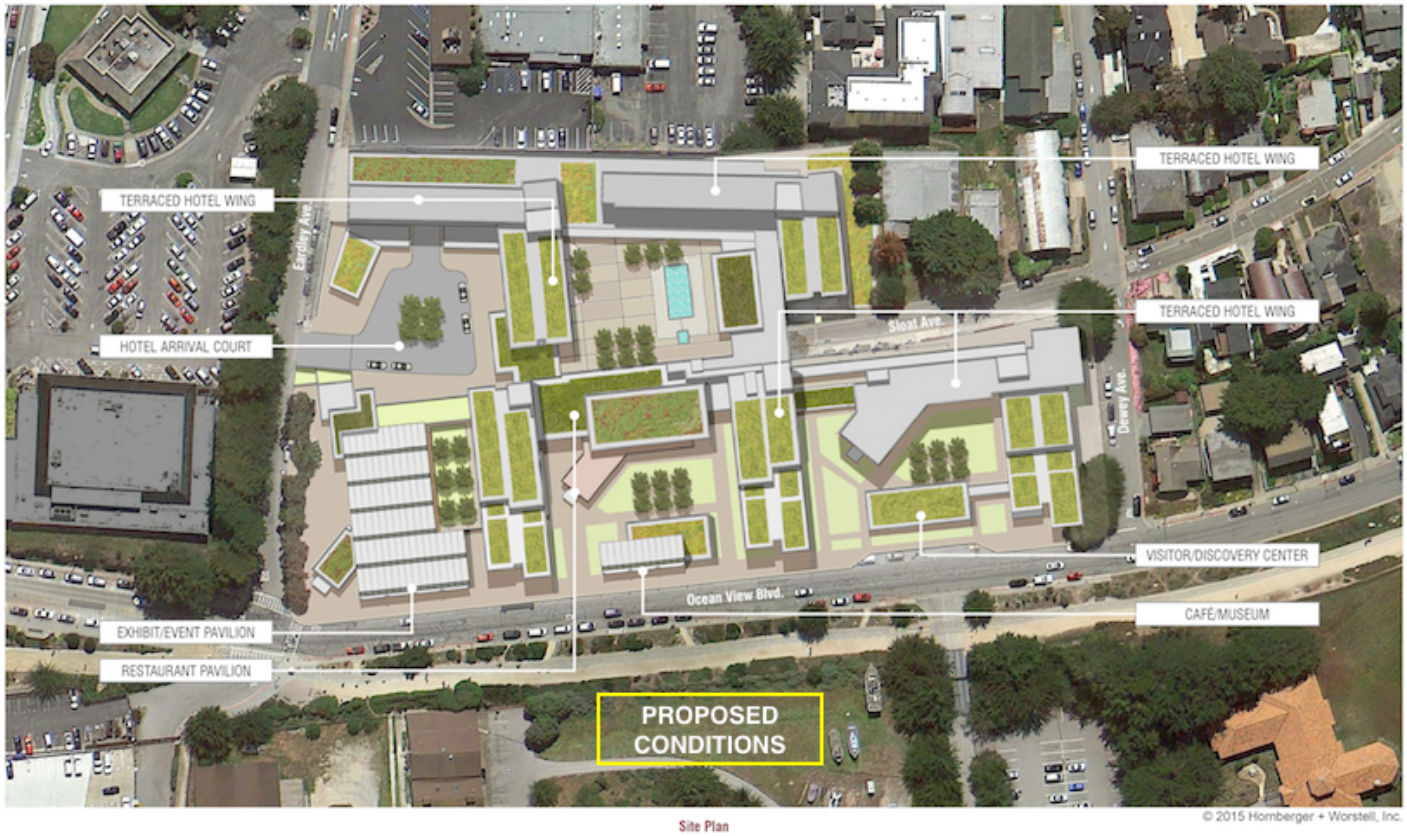
Summary:

I believe the District's proposal would require the CDO to be reopened. Further, the proposal is not aligned with ordering paragraph 3 of CPUC Decision 11-03-048. The District's "framework" of rules might be suitable for managing lawful water; however, managing unlawful water requires very different rules, like the restrictions imposed by Condition 2. The District's proposal represents a square peg in a round hole. Therefore, because the District's proposal would undoubtedly lead to an increased use of unlawful water, I urge the SWRCB to reject the MPWMD proposal(s).

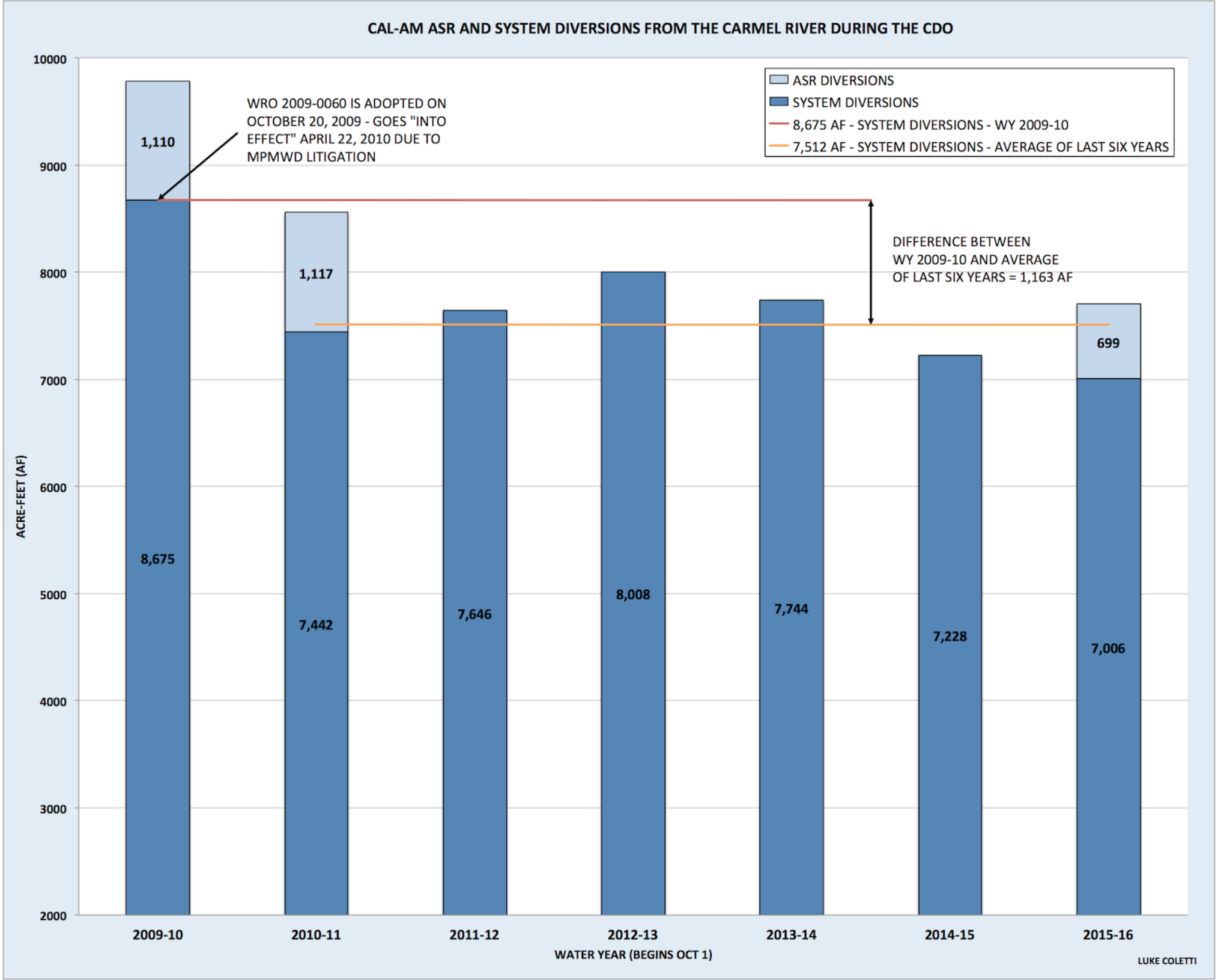
I also urge the SWRCB to maintain and refine the current interpretation, as detailed in their guidance letters, dated April 9, 2012 and May 31, 2013. Further, both Cal-Am and the MPWMD need to work together more effectively so that Cal-Am records of past-metered use can be used to meet the CPUC requirement of a workable protocol for determining the past use baseline. One suggestion is to simply have the MPWMD submit a request and have Cal-Am perform the actual calculation (of average metered annual water use), per SWRCB guidelines. This way only a single number is exchanged.

Luke Coletti
Pacific Grove, CA

EXISITING AND PROPOSED CONDITIONS FOR THE PROJECT BELLA HOTEL IN PACIFIC GROVE



Site Plan


CAL-AM ASR AND SYSTEM DIVERSIONS FROM THE CARMEL RIVER DURING THE CDO
ASR DIVERSIONS
SYSTEM DIVERSIONS
8,675 AF - SYSTEM DIVERSIONS - WY 2009-10
7,512 AF - SYSTEM DIVERSIONS - AVERAGE OF LAST SIX YEARS
WRO 2009-0060 IS ADOPTED ON OCTOBER 20, 2009 - GOES "INTO EFFECT" APRIL 22, 2010 DUE TO MPMWD LITIGATION
DIFFERENCE BETWEEN WY 2009-10 AND AVERAGE OF LAST SIX YEARS = 1,163 AF
ACRE-FEET (AF)
10000
9000
8000
7000
6000
5000
4000
3000
2000
1,110
8,675
1,117
7,442
7,646
8,008
7,744
7,228
699
7,006
2009-10
2010-11
2011-12
2012-13
2013-14
2014-15
2015-16
WATER YEAR (BEGINS OCT 1)
LUKE COLETTI