March 27, 2017

Mr. John O'Hagan
SWRCB
PO Box 2000
Sacramento, CA. 95812-2000

Subject: Sierra Club-PCL Reply to Dave Stoldt Letter Dated March 15, 2017

Dear Mr O'Hagan:

Sierra Club and the Planning and Conservation League wish to respond to Dave Stoldt's letter dated March 15, 2017. Our March 10, 2017 letter was intended to express the views of the 1000 members of Sierra Club that live within the California American service area that is affected by the CDO, and as well the views of PCL. Both PCL and Sierra Club believe that now, with the CDO having been extended through 2021, and with no major alternative water supply yet in place, is not an appropriate time for the District to be seeking approval of an interpretation of Condition 2 that could allow for expansion of existing uses that could disincentivize members of the community from continuing the excellent conservation efforts now taking place.

Sierra Club and PCL believe that the points made in their joint March 10 2017 letter provide no foundation for Mr. Stoldt's claim that the letter is "riddled" with misstatement of fact, "willful disregard" of prior discussions, and contains "inaccurate conclusions." Rather, Mr. Stoldt seems to forget that it was the Sierra Club that in 1992 initiated protests before the SWRCB claiming that California American was pumping water from the Carmel River alluvium without claim of right to the detriment of public trust resources. Sierra Club presented hydrological evidence at hearings before the SWRCB in 1995 that resulted in WRO 95-10, which determined that California America was illegally diverting water from the Carmel River alluvium in violation of California water law, and that it was committing an unlawful trespass, all to the detriment of public trust resources. The District was a party to this hearing and disputed Sierra Club's hydrologist's conclusions that the California American pumping was unlawful.

Finally in 2008, after 13 years of frustration at the lack of progress in reducing the unlawful diversions from the River, arising from the failure of the District and California American to find alternative water supply sources, the Sierra Club, along with PCL, requested the SWRCB to initiate hearings to consider imposition of a CDO against California American's continuing unlawful diversions. Sierra Club (and

PCL) actively participated in the hearings that led to WRO 2009-060. Sierra Club as well was an intervenor-respondent in the litigation commenced in 2009 by the District and California American challenging implementation of the SWRCB CDO. After the Santa Clara County Superior Court dissolved the ex parte injunction obtained by the District from the Monterey County Superior Court, and denied California American's Motion for Preliminary Injunction, based on Briefing by the Club and by the State, the Sierra Club participated in prolonged multi party settlement discussions before Judge Richard Silver, which resulted in a Stipulation that stayed the litigation and provided the framework for pursuit of an alternative water supply by means of a desalinization plant.

Since 2013 Sierra Club and PCL have been active participants in the discussions that led to the revised and amended CDO. WRO 2016-0016. . It is certainly not correct for Mr Stoldt, in light of the above, to challenge Sierra Club and PCL as having a "limited understanding" of the District's water supply governance procedures. It is likewise incorrect to charge Sierra Club and PCL as having no interest in balancing the needs of the environment with the ongoing "rights of business and property owners." In the negotiations that took place in connection with WRO 2016-0016 , which included a recognition by Sierra Club and PCL that the Community needed some cushion to augment water use that may have been reduced due to the 2008-2009 recession, both Sierra Club and PCL demonstrated a willingness to take into account the concerns of the business community. See PCL and Sierra Club letter dated March 10, 2017.

In chronicling his complaints, Mr. Stoldt alleges that Sierra Club wrongly states the proposal "would allow it [MPWMD] to approve new development that would use according to the letter's estimate approximately 100 afy." Mr. Stoldt objects to the term "new development". As the context of the March 10 letter makes abundantly clear, what Sierra Club and PCL were discussing was the expansion of existing uses . This could clearly encompass changes of use such as the demolition and conversion of a commercial building to a new use such as a hotel , such as the proposed Project Bella in Pacific Grove. As pointed out in Sierra Club's and PCL's previous letters on this subject, both believe that there is a potential for water credit transfers to take place between commercial property owners that could well exceed the 15 afy that Mr. Stoldt claims are available in his letter. The District admits that the list of projects ready to activate dormant use is incomplete. Its January 18, 2017 memo state: "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 five years." And, for reasons explained in the March 10, 2017 letter, the CEQA compliance obstacles are not insuperable and could be overcome through FONSI's.

Mr. Stoldt then berates the Club for claiming that as a result of the water credit transfers between commercial users there could be incremental pumping from the Carmel River. Mr. Stoldt ignores, however, the fact that baseline conditions for the

purpose of Condition 2 of the 2009 CDO are the water that was being pumped from the River at the time of approval of the CDO in 2009. Thus the transfer of any water credits that antedate 2009 could indeed result in incremental pumping from the Carmel River above the 2009 baseline established by Condition 2. Mr. Stoldt's claim that "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" neglects the temporal dimension of such use, and neglects to take into consideration the baseline for establishing what constitutes an increased use for the purpose of Condition 2 of the 2009 CDO.

In the fourth paragraph of the letter Mr, Stoldt engages in a discussion of what constitutes "growth". However, the principal argument made by PCL and Sierra Club is that the suggested interpretation of Condition 2 could allow augmented uses, or new uses, that would be symbolic of "growth" or at least perceived by others in the community as a sign that conservation efforts may not be as necessary because a developer has been allowed to build a significant new use, or demolish an existing building and replace it with a substantial new use, such as a hotel. While Mr. Stoldt declines to call this "growth" , it is not debatable that it is not a good "signal" to the community to continue its conservation efforts during the time the CDO is in effect, and there is no replacement water supply.

Mr. Stoldt also is critical of the Sierra Club for claiming that "interjurisdictional allocation transfers would be allowed resulting in another 90 acre feet." Perhaps it would have been better to have said in the letter that such transfers "could be allowed," as in the MPWMD proposal it is clear that the District could change its existing regulations at any time to allow inter jurisdictional transfers, The MPWMD proposal states that there can be use of credit from water saved on a site "as permitted and authorized by the MPWMD under its Rules and Regulations." It is also to be noted, as the District admits, that intra-jurisdictional transfers are permitted. Mr. Stoldt's letter fails to address the question as to whether allocations for projects that would otherwise need a permit (pursuant to Condition 2) could be traded in a transfer to allow an increased use on a particular site through an exchange of water credits. Mr. Stoldt states that Sierra Club has "recognized that most jurisdictional water allocations are preallocated to projects that are subject to the moratorium on new meters and that very little of the 90 af is actually available for use." However Sierra Club is concerned that there could be instances where, for a price between willing parties, there could still be a transfer of water credits that would result in an increased or new use that could under the Districts'proposal be allowed to go forward. Although the District has an ordinance that prohibits water credit transfers-exchanges for a consideration, this too could be changed, as the District's proposal, as noted above, provides for water credits "as permitted and authorized by the MPWMD under its Rules and Regulations."

Finally, in the sixth paragraph of the letter, Mr. Stoldt repeats his assertion that there would be no additional pumping 'per se' as a result of the proposal since a

"credit is only derived from an investment in the saving or permanent abandonment of a use of actual water". While this assertion is correct when considered without reference to a 2009 baseline, as pointed out above, it is not correct with respect to transfers of credits that predate CDO baseline year 2009.

Sierra Club and PCL also believe that in establishing preexisting water credits for commercial uses, it is important that the Board require that actual metered use serve as the basis for determining the amount of the water credit, as determined from California American records.

Thank you for the opportunity to clarify these points. Sierra Club and PCL urge staff not to approve the interpretation advanced by the District. The District's proposal is formulated to allow for the construction of significant expanded or new uses that are not appropriate in light of the purposes of the CDO . the absence of an alternative water supply, and the uncertainty of water supply conditions during the remaining five years of the CDO.

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