



**FREQUENTLY ASKED QUESTIONS AND ANSWERS ABOUT THE
CEASE & DESIST ORDER ISSUED BY THE
STATE WATER RESOURCES CONTROL BOARD**
Updated February 2, 2011 at 3 PM

Q1. What is the purpose of this document on the Cease and Desist Order (CDO)?

A1. These Frequently Asked Questions (FAQ) and answers have been prepared by the staff of the Monterey Peninsula Water Management District (MPWMD or District) to help educate the public about the CDO issued by the State Water Resources Control Board (SWRCB) in October 2009. The information herein is the opinion of the MPWMD staff members who authored the various responses, based on staff's understanding of the facts as of the date shown above. The answers are subject to change as new information arises. Readers should carefully review Question #23 before making any important decision that might be affected by the CDO.

This FAQ document is organized in the following order:

- General overview of the CDO (Question #2);
- Near-term water use reductions and potential for rationing (Questions #3-#6);
- Impact of CDO on MPWMD permit activities (Questions #7-#11);
- Request for moratorium by California American Water (Cal-Am) (Question #12);
- Effects to water customers in specific areas or situations (Questions #13-#16);
- Long-term reductions and ramifications (Questions #17-#19);
- More detailed background on the CDO (Questions #20-#22);
- Disclaimer and other sources of information (Questions #23 and #24).

Q2. What is the CDO, and who does it affect?

A2. The CDO is SWRCB Order WR 2009-0060, issued in October 2009. The CDO is against Cal-Am, which serves most of the water customers on the Monterey Peninsula. The CDO prescribes a series of significant cutbacks to Cal-Am's pumping from the Carmel River from 2010 through December 2016. Cal-Am customers may be subject to water rationing, a moratorium on Water Permits for new construction and remodels, and fines if pumping limits are exceeded. Ongoing lawsuits against the CDO will probably not be resolved until late 2011; thus, the specific long-term impacts of the CDO are unknown at this time. Specific groups of Cal-Am customers may not be affected, depending on the situation, as described in Questions #13 through #16 below.

Q3. What water use reductions are required in the near-term?

A3. Water planners define a “Water Year” (WY) as October 1 through September 30. We are presently in WY 2011, which began on October 1, 2010, and ends on September 30, 2011. For WY 2011, the CDO sets a production limit (i.e., the amount of water Cal-Am can pump from the Carmel River) of 10,429 acre-feet per year (AFY¹). This amount is about 856 AF less than Cal-Am was allowed to pump from the river in WY 2009. This pumping limit will be reduced by another 121 AF in WY 2012. Please refer to the CDO website link in Question #20; a chart showing these reductions is provided as Attachment 1.

Q4. How do the Cal-Am pumping restrictions resulting from the Seaside Basin Adjudication add to the effects of the CDO and impact the need to ration?

A4. In addition to the pumping limits from the Carmel River noted in Question #3, the Court’s Seaside Basin Adjudication Decision also calls for another 520 AFY reduction in Cal-Am pumping from its Seaside Basin wells in WY 2012. Further 10% reductions in Cal-Am pumping are specified every three years until the “natural safe yield” of the Seaside Basin is achieved. The Seaside Basin reductions are combined with the CDO reductions in making rationing decisions. More information is available at the Seaside Basin Watermaster website at: <http://www.seasidebasinwatermaster.org/>

Q5. Will I have to ration this year (WY 2011)? How about next year (WY 2012)?

A5. To date, District staff believes that mandatory rationing will not be needed in WY 2011 despite the CDO and Seaside Basin reductions. This is due to the combination of near-normal rainfall and below-normal economic activity, improvements in the Cal-Am system (such as leak reduction), higher water rates, extensive conservation education and outreach by MPWMD and Cal-Am. Also, replenishment of the Seaside Basin from the District’s Aquifer Storage and Recovery program helps reduce the need for Cal-Am to divert Carmel River water to serve customers. Community water use in WY 2010 was well below the CDO limit and remains below the limit to date in 2011. However, after extensive rains in December 2010, January 2011 has been relatively dry. Thus, continued conservation by the community is needed for the community to remain in Stage 1 of the District’s seven-stage *Expanded Water Conservation and Standby Rationing Plan*. The MPWMD is currently in Stage 1, which prohibits water waste and requires landscape water audits and water budgets for large outdoor water users. The text of the MPWMD *Expanded Conservation and Standby Rationing Plan* is on the District website at: <http://www.mpwmd.dst.ca.us/wdd/Conservation/STAGE%201%20WATER%20CONSERVATION%20and%20water%20waste.htm>

¹ An Acre-Foot is 325,851 gallons or enough water to supply about five average homes in the cities or three average homes in the unincorporated County areas for one year. An Acre-Foot can also be expressed as the amount of water it would take to cover a football field with one foot of water.

Based on the numerical production limits specified for Cal-Am in the CDO and in the Seaside Groundwater Basin Adjudication Decision, the District's rules call for Stage 5 water rationing to be implemented. However, the District's rules also allow adherence to a lower, less restrictive conservation stage if it can be shown that water production limits can be achieved at that lower stage. In July 2010, the MPWMD General Manager issued a formal determination (including evidence) that Stage 5 rationing will not be needed for WY 2010, and that Stage 1 conservation program will suffice. Given the excellent conservation performance in 2010, it is reasonable to expect that similar results will occur in 2011. It is noted that the General Manager determined at the May 17, 2010 Board meeting that rationing is not required, based on physical factors such as stream flow and groundwater storage.

Water Year 2011 started on October 1, 2010. The weather, economic and other conditions in the remainder of WY 2011 cannot be predicted at this time. However, if the community can control its water use and continue its excellent conservation habits, we can prevent the need for mandatory rationing under Stage 5. To help achieve these reductions in use, the District and Cal-Am offer an expansive Rebate Program that includes indoor fixture such as toilets and clothes washers; irrigation system components; and an array of incentives for non-residential retrofits for water-using equipment that is related to cooling systems and the food service industries.

Q6. What would Stage 5 Water Rationing entail, if imposed?

A6. For single-family residential use, Stage 5 entails a specific ration of 70 gallons per day per person, regardless of the size of the home or landscaping. Multi-family residential users (apartment dwellers) would receive a ration of 45 gallons per day per person. Each residence should have already filled out a water survey form indicating the number of persons in the home. Commercial businesses, public uses and golf courses must also reduce their use to meet the reduction goals. Additional allowances of water may be available for medical needs and other specific purposes addressed in District Rule 169, which is shown on the District website at: (http://www.mpwmd.dst.ca.us/rules/2010/April/pdfs/RegXV/RegXV_rule169.pdf).

Any variance will require the customer to meet specific conservation requirements first. Requests for variances will not be considered until Stage 5 Water Rationing has been officially declared.

Q7. How has the Monterey Peninsula Water Management District been involved with the CDO to date?

A7. Though the CDO is directed against Cal-Am, MPWMD has been actively involved in the CDO because 95% of the people who live within MPWMD boundaries are Cal-Am customers. The MPWMD Board of Directors has consistently opposed the CDO due to technical flaws and the potential for adverse health and safety impacts to the community. MPWMD staff provided expert testimony in hearings on the draft CDO in Sacramento in 2008, and offered comments on earlier versions. When the final CDO was approved by the SWRCB in October 2009, MPWMD

and Cal-Am filed suit. The lawsuits are awaiting consideration by the Court. The MPWMD successfully convinced the Monterey County Superior Court to suspend (“stay”) implementation of the CDO from November 2009 through April 22, 2010, when a new judge reinstated the CDO. It is notable that the venue for the CDO proceedings was moved in January 2010 from Monterey to Santa Clara County at the request of the SWRCB.

Q8. How does the CDO affect the ability of MPWMD to issue Water Permits for new construction or remodels?

A8. The CDO is directed against Cal-Am. It is not directed against MPWMD or any other public agency, such as a city, and does not affect the ability of MPWMD to issue Water Permits. District staff will continue to issue Water Permits pursuant to the MPWMD Rules & Regulations until directed otherwise by the MPWMD Board of Directors. However, the District is advising all applicants that Cal-Am was ordered by the SWRCB to not connect water meters to any new projects or remodels that intensify water use. Also, on May 27, 2010, Cal-Am filed an amended petition to the California Public Utilities Commission (CPUC) to authorize Cal-Am to refuse to connect new customers in its Monterey District Main System, and to institute a moratorium on new or expanded water service connections (except for certain specified situations). Thus, an applicant may not be able to access Cal-Am water even if he or she has a valid District permit. Please see Question #12 for more information on the Cal-Am moratorium request before the CPUC.

Q9. Will the District issue Water Permits despite the CDO limits and Cal-Am’s request for a moratorium?

A9. Unless or until the District Board of Directors amends the MPWMD Rules & Regulations, or declares a Water Permit moratorium, District staff will continue to issue Water Permits. To stay informed of potential Board action on these topics, please consult the District’s website for Board meeting agenda information at (click on meeting date):

<http://www.mpwmd.dst.ca.us/asd/board/boardpacket/2010/2010.htm>

Q10. What if I have a project in progress (i.e., I already submitted an application to MPWMD)?

A10. MPWMD staff will continue to process and issue Water Permits until directed otherwise. However, there is no guarantee that Cal-Am will act on a Water Permit and set a new connection. In addition, MPWMD may be required to report to Cal-Am information about properties that receive a Water Permits for remodels and other expansions in use that do not entail a new water connection, although it is unclear at this time what action might be taken.

Q11. What about remodel projects that will not result in increased water use due to water credits from retrofitted fixtures and other opportunities allowed by MPWMD Rules & Regulations?

A11. MPWMD staff will continue to process and issue Water Permits that utilize water credits until directed otherwise. As noted in Question #12, there is no guarantee that Cal-Am will act on the Water Permit, especially if a new connection is involved.

Q12. Please describe the request by Cal-Am to institute a moratorium on new or expanded water service connections?

A12. On May 27, 2010, Cal-Am submitted an Amended Application to the CPUC to authorize Cal-Am to refuse to connect new customers in certain areas of its Monterey District, and to institute a moratorium on new or expanded water service connections for projects that obtained all their necessary governmental permits after October 20, 2009. Specific exceptions include: (a) customers who receive Entitlements of water from the Pebble Beach Wastewater Reclamation Project; (b) customers who receive Entitlements of water from the Sand City Desalination Project; (c) meter splits at apartments, commercial and industrial settings that do not result in increased water use; and (d) certain named water systems, including the Bishop, Hidden Hills and Ryan Ranch systems along the Highway 68 corridor. The moratorium would last until either: (a) Cal-Am shows the CPUC written confirmation from the SWRCB that Cal-Am has obtained a permanent supply of water to replace its unpermitted diversions from the Carmel River, or (b) until litigation on the CDO results in the Court overturning the CDO, whichever comes first. The full text of Cal-Am's filing to the CPUC is on the MPWMD website at: <http://www.mpwmd.dst.ca.us/CDO/MoratoriumRequest/27%20May%202010%20Amended%20Application.pdf>

On January 25, 2011, a proposed decision on Cal-Am's request for a moratorium was issued by Administrative Law Judge (ALJ) Gary Weatherford. The draft decision grants Cal-Am's moratorium request as described above, including a moratorium on the use of Water Use Credits. The full Commission could act as early as February 24, 2011. The proposed decision is available on the District website at: http://www.mpwmd.dst.ca.us/puc/CAWMoratorium_2011/InfoPage.htm.

Q13. How does the CDO affect Cal-Am customers in Pebble Beach or Sand City who have Water Entitlements from the District?

A13. The CDO does not cause a moratorium on new or intensified water connections for Cal-Am customers in Del Monte Forest or Sand City that are using an Entitlement of water from the Pebble Beach Wastewater Reclamation Project or the Sand City Desalination Project. The moratorium request by Cal-Am before the CPUC also does not include customers with these Entitlements. However, these customers will be subject to any rationing program that affects the Cal-Am water system.

Q14. How does the CDO affect Cal-Am customers along the Highway 68 corridor (Hidden Hills, Ryan Ranch and Bishop/Pasadera areas)?

A14. The CDO should not result in a moratorium on water connections, but mandatory

conservation and rationing could occur in Cal-Am's Hidden Hills, Ryan Ranch and Bishop water systems if Cal-Am's actual production exceeds target production limits. These systems are operated independently from Cal-Am's Main System, and they do not receive direct supply from the Carmel River. However, they are indirectly linked to the Carmel River as a result of water use reductions specified for the Laguna Seca Subarea in the Seaside Groundwater Basin Adjudication Decision of the Monterey County Superior Court. The moratorium request by Cal-Am before the CPUC does not include the Hidden Hills, Ryan Ranch and Bishop systems (see Question #12). Customers in these systems could be subject to outdoor water use budgets, higher water rates, and specified rationing as described in District Regulation XV (Rules 160 through 175). For reference, the CDO does not affect Cal-Am customers along Highway 68 served by water supplies from the Salinas area (that is, east of Los Laureles Grade).

Q15. How will the CDO affect people who have their own wells or are served by a water company other than Cal-Am?

A15. The CDO does not affect people who use their own well, are served by a small mutual water system, or obtain water from a company other than Cal-Am. Seaside residents served by the Seaside Municipal Water Company would not be affected.

Q16. How will the CDO affect projects associated with the Fort Ord Reuse Plan?

A16. The CDO does not affect water customers of the Marina Coast Water District, the entity selected to serve redevelopment of the former Fort Ord.

Q17. What water use reductions are required by the CDO in the long-term?

A17. Table 1 of the CDO requires "reductions in illegal diversions from the Carmel River" (see website link in Question #20). By WY 2016, a total of 9,318 AF of water diversions from the Carmel River would be allowed, which is about a 17% reduction (1,967 AF) as compared to the 11,285 AF annual Carmel River diversions that had been allowed until October 2009. By WY 2017, Cal-Am diversions may total only 3,376 AFY, which is its defined legal water right. This is a 70% (7,909 AF) reduction as compared to the 11,285 AFY allowed until late 2009. In addition, the Seaside Basin Adjudication also calls for a series of reductions from the Seaside Basin in this same time frame at a rate of a 10% reduction (520 AF) every three years until year 2021. Eventually, nearly all of Cal-Am's water supply for the Monterey Peninsula must be replaced with water from new sources, as shown in the graph provided as [Attachment 2](#).

Q18. How will the community be able to meet those reductions without severe hardship?

A18. The reductions called for by the CDO combined with the Seaside Basin Adjudication would be catastrophic for the community without a major new water supply to replace these lost sources. MPWMD and Cal-Am are challenging the CDO because the health and safety of the

community would be severely compromised, as would the local tourist-based economy.

Q19. What is MPWMD doing to reduce hardship to the community due to the CDO?

A19. MPWMD is actively involved in litigation to achieve a fair resolution to the CDO that does not penalize Monterey Peninsula consumers, as we already have one of the lowest water use rates in California. MPWMD and Cal-Am partner in a successful water conservation program that includes multiple water conservation incentives and water waste enforcement, education, new technology and an extensive rebate program.

MPWMD and Cal-Am are also successfully injecting record amounts of Carmel River water into the Seaside Groundwater Basin (1,111 AF in WY 2010 alone) via two Aquifer Storage and Recovery (ASR) wells owned by the District, and are working together to drill two more ASR wells in 2011-2012 to double the production from the ASR program to more than 2,000 AFY. The ASR Project boosts Seaside Basin storage and results in lower Cal-Am extractions from the Carmel River in the dry season, which benefits people and the environment. Also, there has been significant forward progress on a regional water supply solution this past year. On December 2, 2010, after many months of hearings and meetings, the CPUC approved the Regional Project (Phase 1) that would enable Cal-Am compliance with both the SWRCB Order 95-10 and Seaside Basin Adjudication. The Regional Project features a large desalination plant in Marina along with smaller ASR facilities and other components. It is hoped that the Regional Project will result in full compliance with the CDO by the December 2016 deadline. The District is also pursuing water supply options to meet the needs of legal lots of record and moderate growth, and supports the Groundwater Replenishment Project proposed by the Monterey Regional Water Pollution Control Agency as a component of the Phase 2 Regional Project.

Q20. What does the CDO actually say?

A20. The CDO includes the following major subjects: (1) a schedule for Cal-Am to reduce diversions from the Carmel River; (2) a ban on new and intensified water connections; (3) a requirement to build smaller near-term water supply projects; and (4) reporting procedures. The full text of the October 2009 CDO can be found on the District's website at:

http://www.swrcb.ca.gov/waterrights/board_decisions/adopted_orders/orders/2009/wro2009_0060.pdf

Q21. Why does the CDO exist in the first place?

A21. The CDO may be viewed as an enforcement action. In July 1995, the SWRCB issued Order WR 95-10 against Cal-Am. The 1995 Order determined that roughly 70% of the water Cal-Am supplies to the community does not have a valid water right, and is therefore unlawful. The Order required Cal-Am to develop water supply sources in places other than the Carmel River. Cal-Am has not developed a substitute supply to date. The lack of a replacement supply

was cited by the SWRCB as the reason the CDO was imposed. Notably, the proposed Regional Water Project currently before the CPUC is intended to enable Cal-Am to comply with both Order 95-10 and the CDO.

Q22. How long will the CDO last?

A22. The CDO is now in effect and will remain in effect at least until the lawsuits filed against the SWRCB by MPWMD, Cal-Am and other parties are resolved by the Court. The litigation timeline is uncertain, but the parties hope for resolution sometime in 2011. Based on a January 13, 2011 Case Management Conference before the judge, it appears that there could be a hearing as early as May-June 2011.

Q23. Are there limitations on how the public should use this document (disclaimer)?

A23. Yes. The MPWMD has used all reasonable efforts and resources to include accurate and up-to-date information about the topics referenced in this FAQ and answers. The answers offer general and summary statements regarding a complex and changing set of legal requirements. Because the topics discussed are technical and legal in nature, and the rules respecting their application are subject to continual modification, MPWMD cannot provide any warranty or representation as to the accuracy of these answers, and assumes no liability or responsibility for any errors or omissions as to the content of these answers. Specific facts and circumstances may create an exception to the general principles that are stated. Before any person relies on the assessments contained in this FAQ document, they are encouraged to seek expert legal advice. The MPWMD shall bear no liability for the content of this FAQ document, or for the consequences of any actions taken on the basis of the information provided, unless that information is subsequently confirmed in writing, based upon an agreed statement of facts. These responses may provide links to other websites and access to content prepared by third parties. MPWMD is at no time responsible for third party content accessible through the District website, including opinions, advice and statements.

Q24. What other sources of information are available on this matter?

A24. More information on the CDO and related topics may be available from one or more of the following sources:

- California American Water at: <http://www.amwater.com/caaw>
- State Water Resources Control Board at: <http://www.swrcb.ca.gov>
- California Public Utilities Commission (CPUC) Division of Ratepayer Advocates: <http://www.dra.ca.gov/dra>



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