



**NOTICE OF INTENT TO ADOPT AN INITIAL STUDY  
AND  
PROPOSED NEGATIVE DECLARATION**

1. **PROJECT TITLE:** Adoption of Ordinance No. 154: "2012 Water Use Credit Tolling Ordinance of the Monterey Peninsula Water Management District."
2. **DESCRIPTION AND LOCATION OF PROJECT:** Proposed Ordinance No. 154 (Attachment 2 of the Initial Study) reinstates Water Use Credits affected by State Water Resources Control Board Order WR 2009-0060 (Cease and Desist Order or CDO) against California American Water upon the date the 2009 CDO no longer has any force or effect. Water Use Credits affected by the CDO will be reinstated with the same value and with a term equal to the length of time the Water Use Credit was affected by the CDO.  
  
Ordinance No. 154 applies to Sites served by the California American Water Company within the boundaries of the Monterey Peninsula Water Management District (MPWMD), including the cities of Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand City, Seaside, portions of Monterey County (primarily Carmel Valley, Pebble Beach and the Carmel Highlands), and the Monterey Peninsula Airport District. Each of these Jurisdictions regulates land use within its individual boundaries and is responsible for CEQA review of individual projects that are proposed. The District does not regulate land use.
3. **REVIEW PERIOD:** The Review Period is August 2, 2012, through August 22, 2012. CEQA allows a 20-day comment period for issues of local importance.
4. **PUBLIC MEETINGS:** The first reading of Ordinance No. 154 will be considered at the MPWMD Board meeting of August 20, 2012. The second reading and consideration of adoption of the Ordinance and Negative Declaration is scheduled for public hearing on September 17, 2012. Both Public Hearings will be held at 7:00 PM at the District office at 5 Harris Court, Building G, Monterey, California.
5. **LOCATION OF DOCUMENTS:** The proposed Negative Declaration and Initial Study and copies of proposed Ordinance No. 154, are available for review at the Monterey Peninsula Water Management District office located at 5 Harris Court, Bldg. G, Monterey, CA 93940 (Ryan Ranch) and on the District's website at [www.mpwmd.net](http://www.mpwmd.net) under "Important Announcements -- CEQA Notices." **The staff contact is Stephanie Pintar at 831/658-5630 or [SPintar@mpwmd.net](mailto:SPintar@mpwmd.net).**
6. **PROPOSED FINDING SUPPORTING NEGATIVE DECLARATION:** Based on the Initial Study, the Monterey Peninsula Water Management District Board of Directors finds that adoption of Ordinance No. 154 does not have a significant effect on the environment.

**PROPOSED NEGATIVE DECLARATION**

**Based on the finding that adoption of Ordinance No. 154, the 2012 Water Use Credit Tolling Ordinance of the Monterey Peninsula Water Management District, has no significant effect on the environment, the Monterey Peninsula Water Management District makes this Negative Declaration regarding MPWMD Ordinance No. 154 under the California Environmental Quality Act.**

**CEQA Environmental Checklist  
MPWMD ORDINANCE NO. 154**

**PROJECT DESCRIPTION AND BACKGROUND**

Project Title:	Adoption of Ordinance No. 154: Tolling Water Use Credits Affected by State Water Resources Control Board Order WR 2009-0060
Lead agency name and address:	Monterey Peninsula Water Management District (MPWMD), P.O. Box 85, Monterey, CA 93942-0085 [Street Address: 5 Harris Court, Bldg. G, Monterey, CA 93940]
Contact person and phone number:	Stephanie Pintar, 831/658-5630 or SPintar@mpwmd.net
Project Location:	Monterey Peninsula Water Management District, see <b>Attachment 1</b> , map
Project sponsor's name and address:	Monterey Peninsula Water Management District, P.O. Box 85, Monterey, CA 93942-0085 [Street address: 5 Harris Court, Bldg. G, Monterey, CA 93940]
General plan description:	Varies throughout MPWMD
Zoning:	Varies throughout MPWMD
Description of project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation.)	Proposed Ordinance No. 154 ( <b>Attachment 2</b> ) reinstates Water Use Credits affected by State Water Resources Control Board Order WR 2009-0060 (Cease and Desist Order or CDO) at the conclusion of the CDO with the same value and with a term equal to the length of time the Water Use Credit was affected by the CDO.
Surrounding land uses and setting; briefly describe the project's surroundings:	<p>Land uses within the MPWMD range from urban and suburban residential and commercial areas to open space/wilderness. The MPWMD encompasses the cities of Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand City, Seaside, portions of Monterey County (primarily Carmel Valley, Pebble Beach and the Highway 68 corridor), and the Monterey Peninsula Airport District. Each of these jurisdictions regulates land uses within its boundaries. The MPWMD does not regulate land uses.</p> <p>The Monterey Peninsula is dependent on local sources of water supply, which (directly or indirectly) are dependent on local rainfall and runoff. The primary sources of supply include surface and groundwater in the Carmel River basin, and groundwater in the Seaside Basin (<b>Attachment 1</b>).</p> <p>Vegetation communities on the Monterey Peninsula include marine, estuarine, and riverine habitats; fresh emergent and saline emergent (coastal salt marsh) wetland communities; riparian communities, particularly along the Carmel River; a wetland community at the Carmel River lagoon; and upland vegetation communities such as coastal scrub, mixed chaparral, mixed hardwood forest, valley oak woodland, and annual grassland. These communities provide habitat for a diverse group of wildlife. The Carmel River supports various fish resources, including federally threatened steelhead fish and California red-</p>

	legged frog.
Other public agencies whose approval is required (e.g. permits, financial approval, or participation agreements):	None

**ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:**

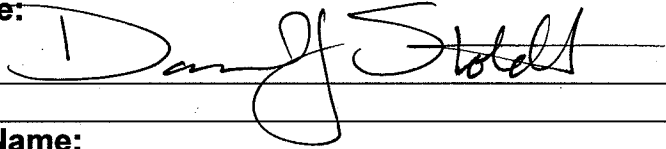
The environmental factors checked below would be potentially affected by this project. Please see the checklist beginning on page 3 for additional information.

<input type="checkbox"/>	Aesthetics	<input type="checkbox"/>	Agriculture and Forestry	<input type="checkbox"/>	Air Quality
<input type="checkbox"/>	Biological Resources	<input type="checkbox"/>	Cultural Resources	<input type="checkbox"/>	Geology/Soils
<input type="checkbox"/>	Greenhouse Gas Emissions	<input type="checkbox"/>	Hazards and Hazardous Materials	<input type="checkbox"/>	Hydrology/Water Quality
<input type="checkbox"/>	Land Use/Planning	<input type="checkbox"/>	Mineral Resources	<input type="checkbox"/>	Noise
<input type="checkbox"/>	Population/Housing	<input type="checkbox"/>	Public Services	<input type="checkbox"/>	Recreation
<input type="checkbox"/>	Transportation/Traffic	<input type="checkbox"/>	Utilities/Service Systems	<input type="checkbox"/>	Mandatory Findings of Significance

**DETERMINATION:**

On the basis of this initial evaluation:

<input checked="" type="checkbox"/>	I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
<input type="checkbox"/>	I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
<input type="checkbox"/>	I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
<input type="checkbox"/>	I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
<input type="checkbox"/>	I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required

<b>Signature:</b> 	<b>Date:</b> 8-2-12
<b>Printed Name:</b> David J. Stoldt, General Manager	

## CEQA Environmental Checklist

This checklist identifies physical, biological, social and economic factors that might be affected by the proposed project. In many cases, background studies performed in connection with the projects indicate no impacts. A NO IMPACT answer in the last column reflects this determination. Where there is a need for clarifying discussion, the discussion is included either following the applicable section of the checklist or is within the body of the environmental document itself. The words "significant" and "significance" used throughout the following checklist are related to CEQA, not NEPA, impacts. The questions in this form are intended to encourage the thoughtful assessment of impacts and do not represent thresholds of significance.

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
<b>I. AESTHETICS:</b> Would the project:				
a) Have a substantial adverse effect on a scenic vista	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## II. AGRICULTURE AND FOREST RESOURCES:

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment Project; and the forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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**III. AIR QUALITY:** Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non- attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**IV. BIOLOGICAL RESOURCES:** Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**V. CULTURAL RESOURCES:** Would the project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**VI. GEOLOGY AND SOILS:** Would the project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**VII. GREENHOUSE GAS EMISSIONS:** Would the project:

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**VIII. HAZARDS AND HAZARDOUS MATERIALS:** Would the project:

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>



	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**IX. HYDROLOGY AND WATER QUALITY:** Would the project:

a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Inundation by seiche, tsunami, or mudflow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**X. LAND USE AND PLANNING:** Would the project:

a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XI. MINERAL RESOURCES:** Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XII. NOISE:** Would the project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XIII. POPULATION AND HOUSING:** Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XIV. PUBLIC SERVICES:**

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
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**XV. RECREATION:**

- |  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?                        | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

**XVI. TRANSPORTATION/TRAFFIC:** Would the project:

- |   |                          |                          |                          |                                     |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) Result in inadequate emergency access?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f) Conflict with adopted policies, plans or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

**XVII. UTILITIES AND SERVICE SYSTEMS:** Would the project:

- |  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XVIII. MANDATORY FINDINGS OF SIGNIFICANCE**

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**DISCUSSION OF CHECKLIST ITEMS:** When State Water Resources Control Board (SWRCB) Order WR 2009-0060 (a Cease and Desist Order (CDO) against California American Water (CAW)) no longer has any force or effect, Ordinance No. 154 (the Project) reestablishes Water Use Credits<sup>1</sup> affected by the CDO. The 2009 CDO will be lifted when Cal-Am has obtained a permanent supply of water to replace its unpermitted diversions from the Carmel River that were identified in SWRCB Order WR 95-10.

<sup>1</sup> Capitalized terms found in this document are defined in MPWMD Rule 11, Definitions.

The prior water uses that make up the pool of Water Use Credits that benefit from this Project (i.e., Water Use Credits established between October 20, 1999 and the conclusion of the 2009 CDO) were either active uses prior to SWRCB Order WR 95-10 or were constructed with water from a Jurisdiction's Allocation. The historic use or capacity for use was analyzed in the MPWMD Water Allocation Program Environmental Impact Report (EIR) adopted in 1990 and in the Mitigated Negative Declaration (December 18, 1990) reviewing the California-American Water Company's System Capacity Limit and Operation Strategies Due to Operation of a New Production Well on Paralta Avenue in Seaside. The latter document (State Clearinghouse Number SCH 90030919) tiered off of the Water Allocation Program EIR and formed the basis for adoption of MPWMD Ordinance No. 70, repealing and ending the moratorium on Water Permits in 1993.

#### Water Use Credits

The Water Use Credit process is codified in MPWMD Rule 25.5. A Water Use Credit allows the reuse of the reduced increment of water for up to ten years (up to 20 years at Redevelopment Project Sites). MPWMD Rule 25.5 was adopted to accommodate reconstruction of demolished buildings, allow for future replacement of removed fixtures, and to allow Expansions of Use without requiring water from a Jurisdiction's Allocation. The Water Use Credit process provides an incentive for extraordinary retrofitting and/or installation of proven new technology.

Water Use Credits are documented when there is a Permanent Abandonment of Capacity (MPWMD Rule 25.5-E). The entire increment of reduced water can be reused on the Site, and no Connection Charge is assessed on a Water Permit when the proposed use is offset by a Water Use Credit. Non-Residential Water Use Credits can be transferred to another expanding Non-Residential Site or transferred into a Jurisdiction's Allocation pursuant to Rule 28 (transfers are not components of this project).

Water Use Credits are established as the result of the following actions:

- Demolition of a building or use that is recognized by the MPWMD as being a lawful water use. A lawful use either has been documented to have existing on the date the current Water Permit process was implemented (i.e. March 1985) or one that received a Water Permit following March 1985.
- Permanent disconnection from a Water Distribution System. This action occurs when a User disconnects from CAW to fully utilize an on-site well (Water Distribution System).
- Residential removal of water fixtures. This includes fixtures that are currently exempt from the Water Permit process (i.e. Portable Water Fixtures, fountains, ponds, hot tubs/spas, drinking fountains, pot fillers, darkroom sinks, outdoor showers/sinks, hose bibs, pet/livestock wash racks and water troughs, and multiple Utility Sinks) that were permitted with a debit to a Jurisdiction's Allocation and payment of Connection Charges.

- Permanent installation of ultra high efficiency non-mandated water fixtures, devices and appliances in Non-Residential uses.
- Permanent installation of High Efficiency Appliance Credits in Residential uses. This type of Water Use Credit is used in Residential remodels to allow the addition of water fixtures without requiring water from a Jurisdiction's Allocation. This type of Water Use Credit is difficult to document unless it is done as part of the Water Permit process, since MPWMD is often not contacted to document the change/removal of fixtures until a Water Use Credit is needed.

A Water Use Credit is not issued for a non-permanent Change in Use, such as occurs when tenants change from a higher use (e.g. a restaurant) to a lower use (e.g. retail). The reduction in use under this circumstance is called a "Water Credit." The Water Permit process and the establishment of a Water Credit provide flexibility for Non-Residential tenant needs. A Water Credit allows a use to be reinstated when needed. Reuse of a Water Credit is not time limited, but it must have been a lawful use either documented to have existed when the current Water Permit process was implemented (i.e. March 1985) or that received a Water Permit after March 1, 1985.

Projects that use a Water Use Credit to offset water needs are first reviewed by the land use Jurisdiction. These projects are subject to CEQA review by the Jurisdiction that includes consideration of the availability of sufficient water resources to supply the project. MPWMD does not issue Water Permits without the authorization of the Jurisdiction.

#### Cumulative Impacts

To prepare this Initial Study, MPWMD reviewed its records of documented Water Use Credits that were established between January 1, 2001, and July 1, 2012. This process identified approximately 103 AF (AF) of documented Water Use Credits that would be extended or reinstated upon conclusion of the CDO. Almost two-thirds of these Water Use Credits were documented for Non-Residential reductions in use. The balance was from former Residential uses. Of the 103 AF, approximately 7 AF would be reinstated from Water Use Credits that expired between the date the CDO was enacted and the date the ordinance becomes effective. In addition, MPWMD identified possible future Water Use Credits of over 500 AF. Added together, there is potential for approximately 600 AF of saved water to be reinstated as useable Water Use Credits at the conclusion of the CDO.

MPWMD has mandated future retrofits of existing Non-Residential uses and the State has mandated future High Efficiency Toilet (HET) sales and installations. During the time between now and when these mandates occur, retrofits to the new standards are potential Water Use Credits. Significant, water savings are expected to occur when Non-Residential uses (with the exemption of Visitor Serving Commercial that installed Ultra-Low Flush Toilets (ULFT) by December 31, 2000) convert from older non-ULFT to HET and implement other retrofits required by MPWMD by 2013. A conservative estimate of 165 acre-feet is expected as a result of these requirements.

Potential Water Use Credits exist throughout the MPWMD. Voluntary installation of HET is one example of retrofitting to higher efficiency fixtures than required that currently qualifies for a Water Use Credit. In January 2011, MPWMD staff began documenting the number of voluntary installations of HET in place of required ULFTs during Site inspections. Between January 2011 and July 2012, staff noted 651 voluntary HET installations. Assuming that each HET has a potential credit of 0.004 AF, this equates to 2.6 AF of Water Use Credits noted during routine Change of Ownership inspections over 18 months.

Retrofits that may eventually be documented as Water Use Credits regularly occur. MPWMD Rule 25.5 does not specify timing for an application for Water Use Credit. As water becomes scarcer, it is likely there will be new applications for Water Use Credits for qualifying reductions that have taken place in the past ten years. Until an application for a Water Use Credit is submitted to MPWMD, these savings may not be identified or quantified.

MPWMD also has an extensive Rebate Program that provides substantial refunds for installation of ultra high efficiency devices and appliances. Although the purpose of the Rebate Program is to reduce potable demand, nearly all the water savings associated with the Rebate Program has the potential to be converted to Water Use Credits. Water saved through the Rebate Program can be used as a Water Use Credit on a Water Permit if the Rebate fees are paid back to the MPWMD. To date, the Rebate Program has reduced potable use by more than 350 AF each year.

#### CDO and Moratorium

Water Use Credits have been negatively impacted by both the CDO and California Public Utilities Commission (CPUC) Decision 11-03-048, issued on March 24, 2011. The CPUC decision recognized the moratorium that was established by Order WR 2009-0060.

The CDO prescribes a series of significant cutbacks to CAW's pumping from the Carmel River from 2010 through December 2016. CAW customers may be subject to water rationing, a moratorium on Water Permits for new construction and remodels, and fines if pumping limits are exceeded. The CDO is expected to remain in place until a permanent supply of water replaces the unlawful diversions of Carmel River water.

The CDO restricts the setting of new water meters (i.e. New Connections). MPWMD rules require a water meter for every new user when a New Structure is built. This requirement does not apply to incidental water use, such as a single bar sink in a Non-residential space, nor does it apply to tenant improvements provided there are no substantial structural modifications necessary to facilitate the changed use. Ideally, each user is separately metered, providing the individual user with feedback regarding their consumption. Separate meters also facilitate water rationing enforcement when needed.



As mentioned previously, Water Use Credits can offset demand in New Construction of New Structures, as well as Expansions of Use. However, a Water Use Credit is not restricted to how it can be used, so a credit may be impacted differently by a moratorium. Currently, MPWMD continues to process and issue Water Permits for all types of uses, but when an Applicant applies for a water meter at CAW, they are affected by the moratorium on new connections. CAW will not set new meters for New Connections approved after October 20, 2009. Projects that do not involve new or enlarged water meters are not reviewed by CAW and have continued to receive building permits.

In a letter dated April 9, 2012, Barbara Evoy, Deputy Director of Water Rights for the SWRCB, further clarifies how the moratorium affects the use of Water Use Credits. It appears that with the strictest interpretation, many of the Water Permits issued by MPWMD (and subsequently the building permits issued by the Jurisdictions) could be affected by the CDO. This letter is attached as Exhibit XX-D.

#### Conservation Savings

In 1986, the MPWMD Board established a goal of conserving 15 percent of the water demand projected for the year 2020. This translates to a long-term conservation goal of approximately 3,900 AF based on the 2020 water demand of 26,000 AF projected at the time the goal was established, though actual 2020 demand is now anticipated to be less than 26,000 AF. Build-out of the CAW system is presently (2012 estimate) projected to be around 19,800 AF. Significant demand reductions have resulted from extensive efficiency programs overseen by MPWMD. Adoption of the Project would have a less than significant impact on conservation savings as most of the Water Use Credits identified by this analysis were considered in the development of water supply sufficient to remove the CDO.

In 2009, Governor Arnold Schwarzenegger implemented the *20x2020 Water Conservation Plan*. The *20x2020 Plan* calls for a 20 percent per capita reduction in urban water demand by 2020. As of 2011, CAW had not yet achieved the required per capita reduction in its Monterey County District<sup>2</sup>. The Project may cause some loss of conservation savings resulting from reuse and from reinstatement of Water Use Credits that would be disallowed by current MPWMD policy. Reduced conservation savings could affect achievement of the 20x2020 goal for the CAW Monterey County District.

#### Conclusion

Based on this Initial Study, MPWMD believes that adoption of Ordinance No. 154 would have less than significant environmental impacts. MPWMD is aware that CEQA requires preparation of a negative declaration if there is no substantial evidence that the project may cause a significant effect on the environment. (CEQA Guidelines §15063(b)(2).) For these reasons, MPWMD intends to adopt a negative declaration regarding adoption of Ordinance No. 154.

U:\demand\CEQA Docs\Ord XXX\2012 Ord 154 V2\_ Initial Study\_SLP\_20120802Rev.docx

<sup>2</sup> Source: *2010 California American Water Urban Water Management Plan for the Central Division, Monterey County District*, Final Draft, May 21, 2012



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

**APR 09 2012**

In Reply Refer to:  
MJQuint:262.0(27-01)

California American Water - Monterey  
c/o Tim Miller  
1033 B Avenue, Suite 200  
Coronado, CA 92118

Dear Mr. Miller:

ORDER WR 2009-0060; CALIFORNIA PUBLIC UTILITIES COMMISSION DECISION 11-03-048

Thank you for your November 29, 2011 letter regarding the California Public Utilities Commission (Commission) Decision 11-03-048 (D. 11-03-048) and a need for clarification from the State Water Resources Control Board (State Water Board) related to Condition 2 of Order WR 2009-0060. You identify that Commission D. 11-03-048 imposes three separate obligations on Cal-Am with respect to implementing a moratorium and consultation with the State Water Board. Your letter recites the requirements from the Commission's decision, then sets forth Cal-Am's proposal, followed by a description of a meeting with the Monterey Peninsula Water Management District (MPWMD). This response includes your recital of the Commission decision, Cal-Am's proposal and the State Water Board's responses to each proposal in the order presented in your letter.

Condition 2 of Order WR 2009-0060 states "Cal-Am shall not divert water from the Carmel River for new service connections or for any increase use of water at existing service addresses resulting from a change in zoning or use after October 20, 2009, provided that any such service had obtained all necessary written approvals required for project construction and connection to Cal-Am's water system prior to that date."

**Ordering Paragraph 2 of D.11-03-048 states:**

California-American Water Company shall confer with Monterey Peninsula Water Management District on the subject of how best to serve demonstrated and compelling institutional public health and safety water needs within the Monterey District in the light of Condition 2 [of Order WR 2009-0060].

**Cal-Am's Proposal:** Cal-Am proposes that upon the MPWMD finding that an institutional project presents a demonstrated and compelling public health and safety need that warrants an exception to Condition No. 2, Cal-Am will cooperate with the interested institution and MPWMD staff to meet with State Water Board staff and request that the State Water Board issue an exception from Condition 2. You state that the MPWMD agreed that Cal-Am's approach would best address any identified institutional health and safety needs.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

State Water Board's Response: The State Water Board generally agrees with the proposed procedure of requesting an exception from Condition 2 for public health and safety needs, provided: (1) the procedure allows adequate time for State Water Board staff to review the proposed exception; and (2) expanded water service is not provided prior to the State Water Board granting such an exception. Prior to approving any exception to Condition 2, Cal-Am must be able to demonstrate that the Carmel River is the only available and viable water supply to meet the public health and safety need.

**Ordering Paragraph 3 of D.11-03-048 states:**

Cal-Am shall confer with MPWMD and then consult with the State Water Board to develop or select a workable protocol for determining the past use baseline as well as measuring increase in water use.

Cal-Am's Proposal: Cal-Am proposes that an increase in water use will be determined by comparing the estimated consumption of the proposed use, determined by the MPWMD using MPWMD's fixture count or commercial factor method, to the lower of the fixture count for the existing use, or the five year historical average of actual water use for the service address. MPWMD suggests using a factor to factor comparison only (and not comparing to actual historical use) because comparing to prospective use based on fixture unit counts to actual usage may induce prospective property sellers to artificially increase water use to facilitate changes in use by prospective buyers.

State Water Board Response: The State Water Board agrees to meet and discuss this matter. The potential for property owners to artificially increase water use to obtain a higher historical water use baseline is of concern. Until a determination to the contrary is made, the State Water Board will determine the baseline for past water use based on the lesser of the actual average metered annual water use for a water year from the last five years' of records, or the amount calculated from the fixture unit count.

**Ordering Paragraph 4 of D.11-03-048 states:**

Cal-Am shall ask the State Water Board for written guidance with respect to any unresolved issues of interpretation or implementation concerning Condition 2 of Order WR 2009-0060, including any pertaining to requests by holders of water credits and entitlements from the MPWMD.

Cal-Am's Proposal: Cal-Am and MPWMD identified the following issues:

**Changes in "Use"**

Condition No. 2 of Order WR 2009-0060 prohibits Cal-Am from serving an increased use of water at an existing service address due to a change in zoning or use. [Footnote 2 states "There has been little debate that a "change in zoning" is a Legislative act by the local land use authority that changes the use allowed as of right to a piece of real property. If the State Water Board had a different intent when adopting Order WR 2009-0060, we request clarification of the State Water Board's intent."] Because the word "use" is included in the same phrase as "zoning," Cal-Am interprets that phrase to reference local land use regulations. Therefore, whether there is a change in "use" depends on how the local land use regulations classify businesses; however such classifications may vary by jurisdiction, frequently contain illustrative and not exhaustive lists, and may vary from MPWMD regulations regarding a change in use. We request that the State Water Board clarify how a "change in use" is to be determined for the purposes of complying with Order WR 2009-0060.

State Water Board Response: The intent of Condition 2 is to limit an increase in water consumption from the Carmel River that may be caused by regional or local zoning and land use changes to the conditions that existed at the time of the Order. On October 20, 2009, the date of Order WR 2009-0060, each existing service connection had a specific zoning and use designation by both MPWMD and local land use authorities, and some prospective users may have obtained all necessary written approvals required for project construction and connection to Cal-Am's water system. The State Water Board concludes that Condition 2 prohibits any increased water use at an existing service address that results from a change in zoning or use approved by either MPWMD or a local land use authority after October 20, 2009.

#### Use of Water Credits

Under the MPWMD's rules and regulations, if a Cal-Am customer invests in certain water conserving improvements, that customer can obtain a "credit" for a portion of the water that is estimated to be conserved by the improvement. That credit can then be used in the future if the customer proposes to modify their property in a way that may increase water consumption. The water credit concept is discussed in State Water Board Order WR 2010-001 and the petitions for reconsideration that gave rise to that Order. It is Cal-Am's contention that Order WR 2010-001 clearly expressed the State Water Board's interpretation of Order WR 2009-0060, to wit that water credits may not be used to serve a new connection or an increased use of water at an existing service address due to a change in zoning or use. Because debate remains regarding this issue, Cal-Am and the MPWMD request the State Water Board to squarely address whether MPWMD water credits may be used to authorize a new connection or an increased use of water at an existing service address.

State Water Board Response: The State Water Board agrees with Cal-Am's contention that water credits may not be used to serve a new connection or an increased use of water at an existing service address due to a change in zoning or use as described above.

#### Changes in Water Service Associated with Remodeling Existing Structures

One of the most significant areas of debate is the extent to which the State Water Board's moratorium affects changes in water use attributable to remodeling existing structures. This issue arises in many forms, but the most common issues are:

- the addition of a second bathroom to an existing single family residential structure;
- the addition of a fire service connection due to a remodel, where such connection is required by the Fire Code; and
- the addition of units to an existing structure by subdividing existing units into multiple, smaller units, where a new meter is required for the additional unit(s) under MPWMD rules, but through water conservation devices, no increase in water use is expected.

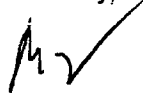
As to the first two instances, Cal-Am contends that whether such a change implicates the moratorium depends on whether the remodel constitutes a "change in zoning or use at an existing service address." If the addition constitutes a "change in zoning or use" under the local land use agency's laws, then the addition is not allowed. If the addition is not a "change in zoning or use" under the local land use agency's laws, then the addition is allowed. We request the State Water Board to confirm that this approach is consistent with the State Water Board's intent. As to the last situation, Cal-Am is unable to ascertain if this constitutes a "new connection" or if the question is whether there is an "increased use of water at an existing service address." This issue is particularly complex within the City of Carmel-By-The-Sea, where there are no street addresses. We request clarification from the State Water Board as to on how to analyze such a situation.

**State Water Board Response:** The State Water Board agrees with Cal-Am's position that if the addition constitutes a "change in zoning or use" under local land use agency ordinances or MPWMD rules, the addition is not allowed. For locations without a definable service address, the parcel number served at the time of the Order adoption is applicable. If new water meters are added to an existing structure that is subdivided into smaller units, with no additional units and with no change in zoning or use, the installation of additional meters is permissible. (See footnote 47 to Order 2009-0060 where the Board discusses the benefits of additional metering to multi-unit structures.) It is not permitted however, to rely on conservation credits to offset additional water use associated with new units. Such practice would amount to use of conservation credits to serve a new connection and is prohibited.

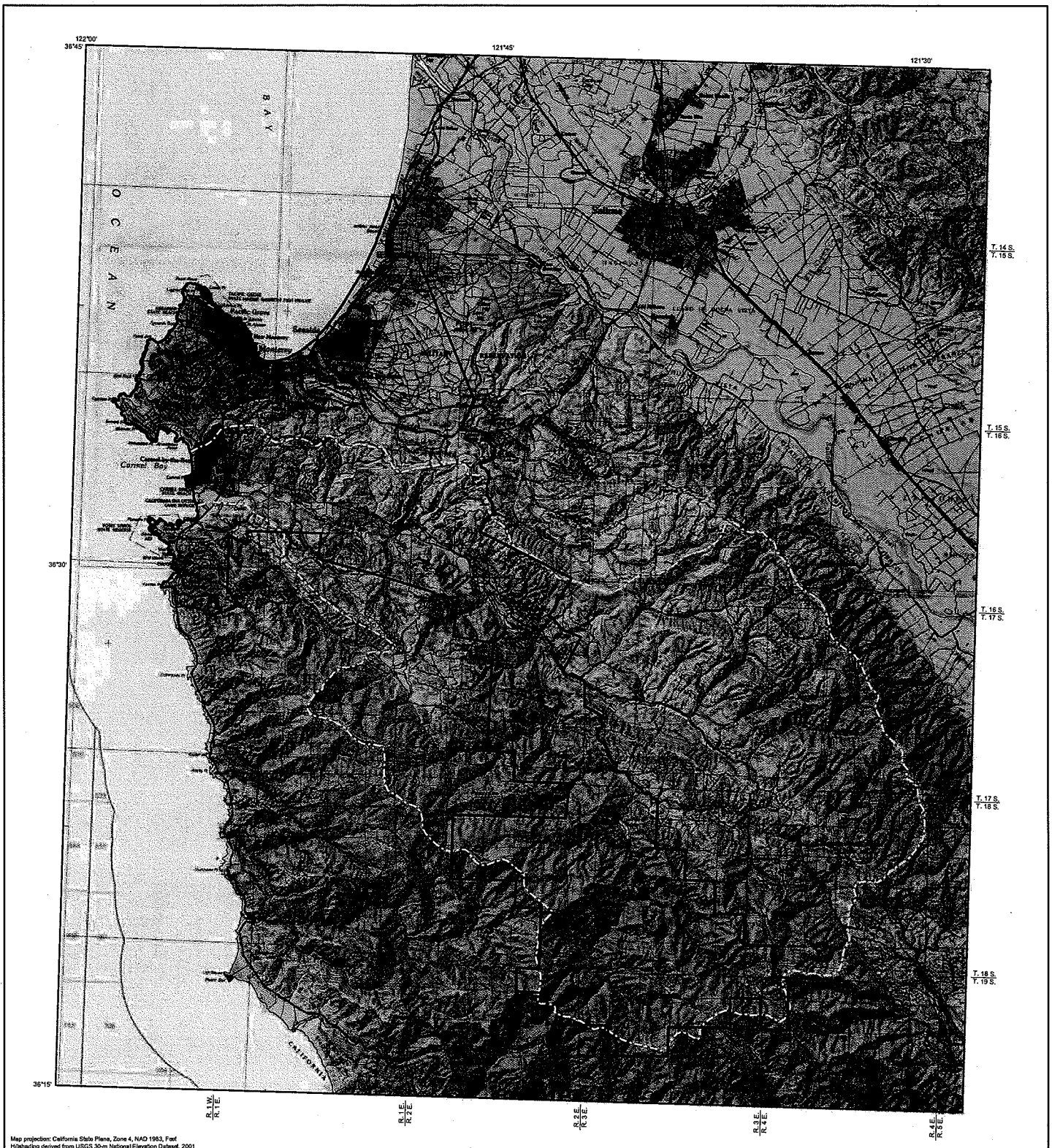
State Water Board staff is available to meet and discuss the responses provided in this letter. If you have any questions concerning this matter, please contact Mr. John O'Hagan of my staff at (916) 341-5368 or by email at [johagan@waterboards.ca.gov](mailto:johagan@waterboards.ca.gov). Written correspondence should be addressed as follows:

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

Sincerely,

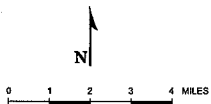


Barbara Evoy, Deputy Director  
Division of Water Rights



Map projection: California State Plane, Zone 4, NAD 1983, Feet  
 Elevation derived from USGS 30-m National Elevation Dataset, 2001

**MAP SHOWING MPWMD BOUNDARY AND CARMEL RIVER WATERSHED BOUNDARY  
 2002**



————— MPWMD Boundary (from MPWMD Map 03-0592, dated May 1992)  
 - - - - - Carmel River Watershed Boundary (from MPWMD map dated June 1987)

Information in this map is preliminary in nature. This information is provided with the understanding that it is not guaranteed to be correct and/or conclusions drawn from such information, whether from individual use or aggregate use with other data, are the responsibility of the user.



Base maps: USGS 1:100,000 topographic quadrangles (Monterey, 1983; Point Sur, 1982)  
 Modified from MPWMD Map 03-0592 (AHP Drafting, May 1992)  
 Digital representation by Law Rosenberg, October 2002

*First Reading Draft*

**ORDINANCE NO. 154**

**AN ORDINANCE OF THE BOARD OF DIRECTORS  
OF THE  
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT  
TOLLING WATER USE CREDITS AFFECTED BY  
STATE WATER RESOURCES CONTROL BOARD ORDER WR 2009-0060**

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**FINDINGS**

1. The Monterey Peninsula Water Management District (MPWMD) is charged under the Monterey Peninsula Water Management District Law with the integrated management of the ground and surface water resources in the Monterey Peninsula area.
2. On May 24, 2010, California American Water (CAW) filed an Application for an Order Authorizing and Imposing a Moratorium on Certain New or Expanded Water Service Connections in its Monterey District (A1005020) with the California Public Utilities Commission (CPUC).
3. California State Water Resources Control Board (SWRCB) Order No. WR 95-10, issued on July 6, 1995, ruled that California American Water did not have a legal right to take approximately 69 percent of the water supplied to California American Water users at that time.
4. SWRCB Order No. 95-10 directed California American Water to reduce its average historical diversions by 15 percent in Water Year 1996 and 20 percent in each subsequent year until its unlawful diversions were terminated.
5. A Cease and Desist Order (CDO) (SWRCB Order WR 2009-0060) was issued on October 20, 2009, by the SWRCB against California American Water (Cal-Am). 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. The CDO is expected to remain in place until unlawful diversion of Carmel River water ceases.

6. The first ordering paragraph of the 2009 CDO requires that Cal-Am "shall terminate all unlawful diversions from the [Carmel River] no later than December 31, 2016."
7. The second ordering paragraph, Condition 2, states: "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. Cal-Am may supply water from the river for new service connections or for any increased use at existing service addresses resulting from a change in zoning or use after October 20, 2009, provided that any such service had obtained all necessary written approvals required for project construction and connection to Cal-Am's water system prior to that date."
8. California Public Utilities Commission (Decision 1103048 rendered March 24, 2011) authorized a water moratorium on certain customers of California American Water.
9. After the 2009 CDO was issued, legal actions were brought separately by Cal-Am and MPWMD, and later by three Carmel River resorts, seeking to invalidate that CDO. These actions were later transferred and consolidated under Case No. 1-10-CV163328 in the Santa Clara County Superior Court. The City Of Seaside, City Of Monterey, City Of Carmel-By-The-Sea, City Of Sand City (collectively "Cities"), Sierra Club, and Carmel River Steelhead Association each intervened in these legal actions.
10. All Parties completed multiple days of settlement negotiations, including mediation by the Hon. Richard M. Silver (Ret.), during which the Parties made substantial progress on key issues. All Parties agreed to terminate the consolidated cases without prejudice and toll applicable statute(s) of limitations to collectively focus their attention on development of alternative water supplies for the Monterey region to the benefit of Cal-Am's customers and the South Central California Coast Steelhead and to comply with the CDO.
11. The Parties agreement to dismiss the Cases without prejudice was based on the express representation and agreement by all Parties (including Real Party-in-Interest and Intervenor(s)) that any and all statutes of limitations related to any future civil action(s) for judicial review of the CDO, as to any claims alleged in the MPWMD and Cal-Am Cases, have been and will be tolled during the Tolling Period for the benefit of Petitioners and the Intervenor Cities.
12. This ordinance is in accord with the Stipulation Staying Case and Tolling Statute of Limitations served on June 4, 2012, between Quail Lodge, Inc., CVR HSGE, LLC, and Bay Laurel, LLC, and the SWRCB and Does 1-30, inclusive, staying Case No. 110CV183439.



13. This ordinance is subject to the California Environmental Quality Act (CEQA) and is processed under a Negative Declaration (ND). This measure shall incorporate the Board's adoption and approval of the ND. The Board considered the ND, together with any comments received during the public review process. Adoption of the ND is based upon the determination, on the basis of the whole record before it (including the Initial Study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment. The MND reflects the Board's independent judgment and analysis.

NOW THEREFORE be it ordained as follows:

## **ORDINANCE**

### **Section One: Short Title**

This ordinance shall be known as the **2012 Water Use Credit Tolling Ordinance** of the Monterey Peninsula Water Management District.

### **Section Two: Statement of Purpose**

This ordinance shall reinstate Water Use Credits affected by the State Water Resource Control Board's (SWRCB) Order WR 2009-0060 when the CDO no longer has any force or effect.

### **Section Three: Reinstatement of Water Use Credits Following Cease and Desist Order**

Water Use Credits affected by State Water Resources Control Board Order WR 2009-0060 (Cease and Desist Order or CDO) against California American Water shall be reinstated upon the date the 2009 CDO no longer has any force or effect, with the same value and with a term equal to the length of time the Water Use Credit was affected by the CDO.

### **Section Four: Publication and Application**

The provisions of this ordinance shall be distributed together with the permanent Rules and Regulations of the Monterey Peninsula Water Management District.

### **Section Five: Effective Date**

This ordinance shall be given effect at 12:01 a.m. thirty days following adoption after second reading.

### **Section Six: Sunset**

This ordinance shall not have a sunset date.

**Section Seven: Severability**

If any subdivision, 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 \_\_\_\_\_, and second by Director \_\_\_\_\_, the foregoing ordinance is adopted upon this \_\_\_\_ day of \_\_\_\_\_, 2012, by the following vote:

AYES:

NAYS:

ABSENT:

I, David J. Stoldt, 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 on the \_\_\_\_ day of \_\_\_\_\_, 2012.

Witness my hand and seal of the Board of Directors this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
David J. Stoldt, Secretary to the Board