EXHIBIT 6-B

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

May 18, 2018

Mr. Erik Ekdahl
Deputy Director
Division of Water Rights
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812

Dear Mr. Ekdahl,

Thank you for your letter dated May 17, 2018 regarding Condition 2 of State Water Resources Control Board (State Water Board or Board) Order WR 2009-0060 (CDO.)

The point the Monterey Peninsula Water Management District (District) has been trying to make since 2012 is that the State Water Board staff's interpretation of Condition 2 simply doesn't work. Further, attempts to provide guidance have strayed from the interpretation letters, has been inconsistently applied by Board staff and California American Water Company (Cal-Am), and requires use of protected private data held by Cal-Am that cannot lawfully be shared by Cal-Am to the District or to others. Our community desires clarity and consistency in a fair set of legally implementable rules that are predictable and universal.

District Resolution 2018-05 does not propose a new approach, rather it reinforces a permitting regime that the District, local land use jurisdictions and the public have relied upon since the mid-1980s. The District respectfully asks the Board acknowledge the District's approach is the best method to achieve the CDO's goals.

The District's water use permitting and accounting regime is perhaps the most rigid in the State. When used in combination with our aggressive conservation programs it has resulted in significant reductions in water use since the CDO. We are chagrined Board staff never engaged in an effort or dialogue to better understand the District's Rules and Regulations and its demand management program. It is disappointing that all four State Water Board staff members who had extensive experience with this subject have now retired or moved on prior to achieving a resolution. We look forward to meeting with the new staff to resolve this problem.

There are specific deficiencies in your letter addressed below:

The State Water Board abrogated the interpretation letters of April 9, 2012 and May 31, 2013 at its July 19, 2016 hearing.

At the July 19, 2016 State Water Board hearing, twenty (20) speakers commented that Condition

2 of Order WR 2009-0060 had not been accurately interpreted by Cal-Am and the State Water Board staff; they argued new guidance was needed to recognize historic property rights and past practice as allowed by District Rules and Regulations. The speakers, as well as State Water Board members, expressed concern that the Board staff interpretation letters of April 9, 2012 and May 31, 2013 were not in the public record and had not been subject to any public review or hearing process. As such, State Water Board Chief Counsel recommended the Board delete Section 5.3.1.5 from the July 15, 2016 draft Order narrative. The motion to adopt the proposed Order was amended to specifically direct deletion of Section 5.3.1.5. This removed any mention of the interpretation letters. The motion also directed State Water Board staff to meet and confer with the parties represented by speakers at the hearing and to report back to the Board within 60 to 90 days from the date of adoption. Since the 2016 hearing, State Water Board staff has failed to provide revised formal guidance on Condition 2 or report to Board members as explicitly required by the motion.

Before Board staff can rely on the letters identified in your May 17, 2018 letter, staff is required to meet with the parties represented at the July 19, 2016 meeting, must also place its interpretations into the public record, and report this action to the Board. Continued reference to the April 2012 letter is flawed as it is contrary to the explicit Board direction contained in the July 19, 2016 motion.

The May 31, 2013 interpretation letter is moot and should no longer be referenced.

The May 31, 2013 letter restated the April 9, 2012 letter, in part, and indicated the Board lacked information to provide additional guidance. The May 31st letter also requested additional information. As such, that letter did not modify the April 9, 2012 position. In light of this modification, the May 31st letter is moot. We ask you to agree that reference to the May 31, 2013 letter is not appropriate.

Changed conditions contradict the basis for the interpretation letters.

The April 9, 2012 letter states: "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." That was reiterated in the May 2013 letter. As a result of a steeply-tiered rate structure and a variety of mandatory and voluntary conservation programs, water use is now almost 3,000 acre-feet less than the conditions that existed at the time of the Order. *Is the State Water Board suggesting we can restore use of 3,000 acre-feet for new projects?* Of course not, but strict adherence and literal interpretation of the letter would suggest such a result is possible. We ask the State Water Board acknowledge the changed conditions and recognize it is a combination of District-wide, synergistic programs that have achieved these results.

Past practice by staff and Cal-Am has ignored parts of the interpretation letters.

Reliance on the interpretation letters, as drafted, is problematic. As an example, the Monterey Bay Aquarium met with staff to seek clarification of Condition 2, in order to allow the Aquarium to convert a predominantly vacant building into a learning center. Staff guidance was that the

building was a commercial use and the renovation would be a commercial use, so therefore there was no "change in use." However, the April 9, 2012 letter specifically states "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…" In this case, MPWMD (the District) has a specific defined term "Change of Use" which includes going from one form of commercial use to another form of commercial use. The reason we do this is to ensure, for example, that a property doesn't go from a low water use such as an office to a high water use such as a restaurant, without first identifying where that increment of water would come from. In this example, State Water Board staff ignored its own interpretation letter.

Board staff and Cal-Am also invented a rule-of-thumb that a building that was commercial and becomes residential, or vice versa, is a "change in use." Nowhere in the April 2012 letter is this laid out. In fact, most cities promote mixed use projects in their general plan and have zoning in place where both uses are allowed. We believe decisions to implement Condition 2 should not be made on an ad hoc basis, rather a consistent interpretation is called for.

State Water Board interpretation calls for data that cannot be lawfully obtained.

The April 9, 2012 letter calls for establishing a baseline for past water use using "actual average metered annual water use for a year from the last five years' of records…" California Public Utilities Commission privacy regulations prohibit third party access to and reliance upon historical water use records by anyone other than the specific account holder. Cal-Am cannot provide such data to prospective building buyers, to subsequent property owners, or even to property owners where the tenant is the account holder. This restriction would also apply to tenants where the owner has a master meter, or to would-be developers. Frankly, Cal-Am cannot provide specific account holder data to the State Water Board or to the District without account holder consent.

State Water Board interpretation is unworkable for permitting new projects or remodels.

It is not possible to look at a set of architectural plans and determine whether the proposed development will or will not use more water than the baseline. At the time a project is granted a permit, future water use is a mere projection or assumption. One can only approximate future water use based on factors reflected in the application, such as the type and scale of a business or the number of water fixtures in a residence. Future water use can only be estimated based on a review of plans. The District has decades of experience estimating demand based on factors (non-residential) and fixtures (residential) that has consistently resulted in projected use (capacity) that does not increase water use above what is available to a site.

Above, I identified just a few of the flaws inherent in the Board's past guidance. You should not be surprised or disappointed that the District sought to provide clarity and objectivity on this topic based upon its decades of practical experience managing local water supplies. The District's longstanding system of regulating and permitting water use relies on industry accepted water demand factors and fixture counts. This regulatory system has demonstrated its ability to ensure capacity to use water at a site remains neutral (water neutrality) following each new

project, renovation, or any change in use at a site. The National Alliance for Water Efficiency has lauded the District's ordinances, rules, and regulations as one of the earliest in the nation to ensure water neutrality in land use permitting – a goal that is consistent with and supportive of Condition 2.

We believe it is incumbent for the parties to meet and develop a consensus. This effort should not be delayed or frustrated by inclusion of third party observers who do not have direct interests at stake; we propose that initial discussions be limited to key institutional parties. I have coordinated potential meeting dates for the District and Cal-Am and have determined we are all available to meet in Sacramento July 9th, 10th, or 13th. Please advise whether you and your staff would like to schedule a meeting on one of those days.

Sincerely yours,

David J. Stoldt
General Manager