



RECEIVED

MAR 19 2018

MPWMD

Submitted 3/19/18  
Item 13

Eric J. Sabolsice  
Director, Operations  
Coastal Division  
511 Forest Lodge Road, Suite 100  
Pacific Grove, CA 93950  
eric.sabolsice@amwater.com

P 831 646.3291  
C 831 236.1011  
F 831 375.4367

March 19, 2018

**Via Hand Delivery and Email**

Board of Directors Monterey Peninsula Water Management District 5 Harris Court, Bldg. G PO Box 85 Monterey, CA 93940	Mr. David Stoldt, General Manager Monterey Peninsula Water Management District 5 Harris Court, Bldg. G PO Box 85 Monterey, CA 93940
---	--

**Re: March 19, 2018 Board Meeting Agenda Item 13, Consider Adoption of Resolution 2018 - 05 Regarding State Water Resources Control Board Order WR 2009-0060**

Dear Directors Lewis, Clarke, Evans, Byrne, Brower, Rubio and Adams, and Mr. Stoldt:

California-American Water Company ("Cal Am") submits this letter in response to the Monterey Peninsula Water Management District's ("MPWMD" or the "District") proposal to adopt Resolution 2018-05, listed as Agenda Item 13 on the District's March 19, 2018 Board Meeting Agenda. Proposed Resolution 2018-05 concerns the interpretation of Condition 2 of the State Water Resources Control Board's ("SWRCB") Cease and Desist Order 2009-0060 (the "CDO"), issued to Cal Am on October 20, 2009. CDO Condition 2 states that "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."

According to the Agenda Report, the purpose of Proposed Resolution 2018-05 is to "provide formal guidance to Cal-Am and the local jurisdictions on how to interpret Condition 2 consistent with District Rules and Regulations." Indeed, the Proposed Resolution expressly directs Cal Am to apply the District's proposed interpretation of CDO Condition 2, and states:

For purposes of Cal-Am or any Jurisdiction interpreting Condition 2, the phrase "any increased use of water at existing service addresses" shall mean increased capacity for use at an existing residential or non-residential site in excess of the pre-project capacity for use, adjusted for credit from water saved on a site, and/or a debit to a jurisdiction's allocation of water, and/or use of a water entitlement as permitted and authorized by the Monterey Peninsula Water Management District under its Rules and Regulations and determined either by using MPWMD fixture unit methodology to determine residential water use, or MPWMD water use factors for determining non-residential water use.

The Proposed Resolution appears contrary to an interpretation of CDO Condition 2 issued by SWRCB staff by letter dated April 9, 2012, and places Cal Am in a very difficult position with both the California Public Utilities Commission ("CPUC") and the SWRCB as Cal Am attempts to comply with the CDO. The Proposed Resolution also jeopardizes the conditions upon which the SWRCB authorized Cal Am to continue its diversions from the Carmel River pending completion of the Monterey Peninsula Water Supply Project. Cal Am risks substantial fines and potentially an injunction restricting Cal Am's diversions by more than 5,000 acre feet per year if it fails to

comply with the terms of the CDO; such a result would have a catastrophic effect on the Monterey Peninsula.

Following issuance of the CDO, on March 28, 2011 the CPUC issued Decision D-11-03-048 ordering Cal Am to recognize Condition 2 of the CDO through modified tariffs, and include in its tariffs a special condition incorporating the moratorium ordered by the SWRCB. (D.11-03-048, p. 49.) The CPUC's decision requires Cal Am to deny requests for new service connections and prohibit any increased use of water at existing service addresses resulting from a change in zoning or use. The CPUC's decision also ordered Cal Am to confer with the District, and then consult with the SWRCB to develop a workable protocol for determining the past use baseline as well as measuring increase in water use. Specifically, the decision ordered Cal Am to ask the SWRCB for written guidance "with respect to any unresolved issues of interpretation or implementation concerning Condition 2 of WR 2009-0060, including pertaining to requests by holders of water credits and entitlements from" the District. (D.11-030048, p. 51).

On November 29, 2011, in light of the CPUC's order, Cal Am sought clarification from the SWRCB concerning, among other things, determining a past use baseline. On April 9, 2012, the SWRCB's Deputy Director of Water Rights provided the SWRCB's 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.

Cal Am understands the District's frustration with the SWRCB's interpretation of Condition 2 of the 2009 CDO, and has been meeting with SWRCB staff along with the District to achieve an interpretation of Condition 2 that better aligns with the District's regulations. Cal Am does not believe that the issue has been finally resolved; nevertheless, the SWRCB has not yet issued any revisions to its position concerning baseline water use. We fully intend to continue to work with the District and the SWRCB within the requirements of the law to reach a resolution satisfactory to all parties. However, compliance with the Proposed Resolution could put Cal Am in the position of risking the water supply security that the community has achieved under the CDO and SWRCB Order 2016-0016 (extending to 2021 the deadline for reducing Carmel River diversions).

Cal Am urges the District's Board of Directors to table this Proposed Resolution at this time until it can obtain certainty from the SWRCB that Cal Am's compliance with the Resolution will not jeopardize the water supply of the Monterey Peninsula.

Sincerely,



---

Eric J. Sabolsice  
Director, Operations – Coastal Division  
California-American Water Company