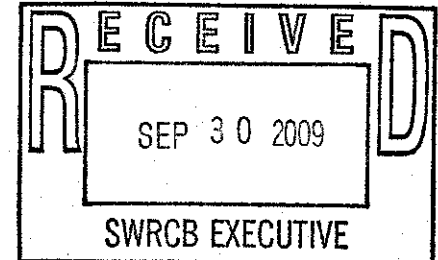




September 30, 2009

Jeanine Townsend
Clerk to the State Water Resources Control Board
P. O. Box 100
Sacramento, California 95812-0100



Re: Comment Letter – 10/20/09 Board Meeting Cal Am CDO

Dear Chair Charles Hoppin and Board Members:

The Monterey County Hospitality Association urges that you not adopt the draft Cease and Desist Order against California American Water Co. issued September 16, 2009.

The State Water Resources Control Board should take into account, as a matter of reasonable and responsible public policy, that the Cal Am service area will have a new water supply source within a short period of time. The broad community consensus supporting the regional water supply project, an alternative to Cal Am's Coastal Water Project, is an historic first; the cooperative agreements of Marina Coast Water District, Monterey Regional Water Pollution Control Agency, and Monterey County Water Resources Agency are also historic firsts, as we mentioned in our previous comment letter (a copy of that letter of August 26th is attached for reference). In our view, SWRCB should defer action on water cutbacks or other action against Cal Am, and by implication against the community served, until 2012, the earliest date a new water supply sufficient to eliminate Cal Am's overpumping of the Carmel River can be realized.

Our reasons for opposing adoption of the CDO are as follows:

- ✓ The water reductions in the CDO threaten public health and safety;
- ✓ The water reductions in the CDO jeopardize the viability of the Hospitality Industry;
- ✓ The CDO does not properly or adequately take into account water reductions ordered by the Seaside Basin Watermaster;
- ✓ The CDO assumptions about water savings from various small water projects are flawed and unrealistic;
- ✓ The CDO assumptions about water supply and water needs being in 'rough equilibrium' are flawed or erroneous;

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- ✓ The proposed water reductions are a punishment of area residents, businesses and local governments that have already accomplished dramatic water use conservation;
- ✓ The CDO does not take into account the 'facts on the ground' re development of a replacement water supply;
- ✓ The CDO does not adequately analyze the trade-off between water available for community use against the marginal benefits to threatened Carmel River species or the marginal benefits to public trust resources generally.

In short, the CDO would cause enormous harm to the residents and businesses of the Monterey Peninsula. The CDO should not be adopted.

THE DRAFT CDO THREATENS PUBLIC HEALTH AND SAFETY

The California Public Utilities Commission informed you in its letter to you for the September 2nd workshop on the July 27th draft CDO that water use within the Cal Am service area is the lowest of any California regulated public utility. The Monterey Peninsula Water Management District has provided you with testimony, exhibits and comments detailing the area's frugal water use. MCHA and other parties and commenters have noted the facts of low water use in the area, which is among the lowest in the state. The prosecution team addressed the issue of what level of water availability is necessary before public health and safety is threatened; the CDO essentially ignores the evidence in the record and furnished in comments. Cal Am service area residents, businesses and municipalities have worked hard with great success to reduce water consumption; it is questionable given the facts and evidence in the record how much more reasonably can be accomplished. The public health, safety and welfare should be the primary consideration for the SWRCB and it is clear the water reductions in the CDO would threaten public health and safety.

THE DRAFT CDO JEOPARDIZES THE VIABILITY OF THE HOSPITALITY INDUSTRY

MCHA has provided you with testimony, exhibits and comments detailing the precarious state of the Hospitality Industry in Monterey County, 90% of which is within the Cal Am service area. Occupancy is extremely low; the latest occupancy data from Smith Travel Research are attached. The rolling twelve-month average occupancy is 57.6%, which is well below the 60% necessary for minimum viability. The CDO would reduce water availability to a level that would make it impossible for the industry to recover and reach even minimum viability levels. Because the Hospitality Industry has strongly embraced water conservation over the last decade, the only options, beyond accomplishing further marginal water savings, are closing of lodging rooms, shutting off food service seats and facilities, and laying off substantial numbers of workers. The Hospitality Industry is the area's principal economic driver; the measures the industry will have to take in response to the draft CDO will harm the local economy, harm hundreds of families,

and harm local governments because of reduced Transient Occupancy Tax and local sales tax revenues.

**THE DRAFT CDO DOES NOT PROPERLY OR ADEQUATELY TAKE INTO ACCOUNT
SEASIDE BASIN WATER REDUCTIONS**

The water cutbacks in the CDO, by themselves, are serious and threaten public health, safety and welfare but the CDO does not analyze the effects on the communities, residents and businesses in the Cal Am service area of the combined CDO cutbacks and Seaside Basin cutbacks and does not acknowledge that Seaside Basin cutbacks will continue and increase over time, as per the order of the Seaside Basin Watermaster. This omission of analysis of the combined water cutbacks and the implications of the combined water cutbacks for public health, safety and welfare is a fatal flaw and no order should issue without such analysis.

**DRAFT CDO ASSUMPTIONS ABOUT WATER SAVINGS FROM 'SMALL PROJECTS' AND
OTHER MEASURES IS UNREALISTIC**

The CDO states that small water projects and measures such as leak elimination, (presumably) increased retrofitting, elimination of outdoor irrigation, and (presumably enhanced) demand management "should" offset water supply reductions from the CDO and from the Seaside Basin adjudication. These assumptions are not supported by any evidence, consequently are mere speculation by the architects of the CDO. Further, the same measures are counted twice as a means by which the community will adjust to CDO reductions and to Seaside Basin reductions. The posited savings are not realistic or reasonable. This bears directly on the question of public health, safety and welfare. Such reliance on uncertain approximations is also a fatal flaw.

The CDO assumption that water supply and water needs are in rough equilibrium is flawed

The CDO states that water supply and water needs are in rough equilibrium (second paragraph on page 52) but does not take into account the effects of the current recession or the effects of the 9-11 attacks on the Hospitality Industry. Current water use is depressed. Thus the 'equilibrium' statement is seriously misleading. Current levels of use, even if averaged over the last nine years, are not an indicator of future needs and should not be used as they are in the CDO.

**THE CDO REDUCTIONS PUNISH RESPONSIBLE WATER USERS –
RESIDENTS, BUSINESSES AND LOCAL GOVERNMENTS**

The CDO cutbacks pose a serious threat to public health, safety and welfare to area residents, businesses and local governments that have worked hard to accomplish dramatic water conservation. It seems preposterous to punish the Peninsula for doing a better job of responsible water use than virtually any other area of California. To speculate, as the CDO does, that the drastic cutbacks will provide area residents motivation for accomplishing a water supply project is unsophisticated nonsense.

**THE CDO DOES NOT REFLECT 'FACTS ON THE GROUND' RE
DEVELOPMENT OF A NEW WATER SUPPLY**

As we mentioned in our comments on the July 27th draft CDO, our area has never been closer to achieving a new water supply. CPUC recently announced a final EIR on Cal Am's Coastal Water Project and its alternatives will be released in October 2009 and certified in January of 2010. The Marina Coast Water District is ready to begin a desal plant as soon as the EIR is certified. MCWD and its consulting engineer state that the desal plant can be completed and operational by 2012. The desal plant will have sufficient capacity to eliminate overpumping of the Carmel River.

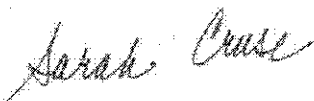
**THE CDO DOES NOT ANALYZE THE HARM TO AREA RESIDENTS, BUSINESSES AND LOCAL
GOVERNMENTS COMPARED TO THE MARGINAL BENEFITS TO PUBLIC TRUST RESOURCES**

SWRCB received significant evidence, testimony and comment on the significant harm the CDO would impose on area residents, businesses and local governments. The CDO provides no analysis of the marginal benefits of the cutbacks on public trust resources. As noted in Order 95-10, there are trade-offs involved between the jeopardy to the community and the assumed benefits of cutbacks to public trust resources. The fact that there is no such analysis in the CDO is another fatal flaw.

Summary

SWRCB can avoid the jeopardy posed by the CDO and the certainty of harm to public health, safety and welfare by not adopting the draft CDO and deferring any action against Cal Am until 2012. Nothing short of this is reasonable or responsible.

Sincerely,



Sarah Cruse, President

Attachments:

MCHA comment letter of August 16, 2009
Smith Travel Research report on Monterey County occupancy for August 2009

August 26, 2009

Charles Hoppin, Chair
State Water Resources Control Board
Joe Cerna Jr./Cal-EPA Building
1001 I Street, Second Floor
Sacramento, California 95814

Re: July 27th Draft Cease and Desist Order WR 2009-00XX Workshop September 2, 2009

Dear Chair Hoppin and Members, State Water Resources Control Board:

The Monterey County Hospitality Association (MCHA) opposes adoption of the July 27, 2009 draft Cease and Desist Order (CDO) against California American Water Company (CAW).

MCHA is an interested party in the proceedings arising from the draft CDO issued in January 2008 and participated in the proceedings by submitting testimony and exhibits, and by cross-examining witnesses.

Our contention was, and is, the water supply cutbacks proposed in the draft CDO present a dire threat to our industry and therefore a threat to public health and safety because of the grave jeopardy to the local taxes our industry generates (upwards of \$55 million) and the imminent threat to local employment (our industry employs 23,000, mainly within the CAW service area). The hospitality industry is the major economic driver for the Monterey Peninsula. We testified that our industry could survive a 5% reduction in water supply but that any reduction beyond that would necessitate closing lodging rooms or restaurant tables which would ipso facto reduce the local tax revenues we generate, the number of workers we employ, and reduce the competitiveness of our industry, which would make surviving difficult or impossible, and further depress the Peninsula economy, leading to more losses in local tax revenues and jobs.

We testified during the 2008 hearings that occupancy levels in lodging facilities were extremely low; the latest figures from Smith Travel Research indicate that current occupancy is lower still and at near historic lows (for the three months through July 2009, occupancy is down 10% from the already low levels in 2008 per Smith Travel Research). This means water use is down because of the lower level of visitors. Cutting back on water availability at this time will make it virtually impossible for the hospitality industry to recover from the economic downturn; this would have a domino effect on local tax revenues, local employment and the general health of the Peninsula economy.

Our further contention is the draft CDO contains confusing mistakes in arithmetic (differences in amounts listed as average pumping in excess of legal limit on pages 32, 38 and 56; differences in CAW water rights figures on pages 5, 35 and 38; difference in amount subtracted from legal supply number due to siltation on pages 5 and 35 and others) and relies on flawed logic, which

we explain below. We leave it to CAW and others to point out the flawed assumptions of achievability or practicality of the incremental annual reductions in the draft CDO.

Punishing CAW or CAW's customers?

Water conservation on the Peninsula has been extraordinary, but the CDO seeks to punish CAW's customers. Evidence was submitted in the CDO hearings about Peninsula water savings accomplished since Water Rights Order 1995-10 (95-10, or WR 95-10) issued. The prosecution submitted testimony that achieving a residential water use level of 75 gallons per person per day would not, according to the California Code of Regulations, jeopardize public health or safety. Evidence was submitted by CAW and the Monterey Peninsula Water Management District (MPWMD) that a) Peninsula use is already at or below that level and b) Peninsula per capita water use is already among the lowest, if not the lowest, in California. Since the Peninsula will have to adjust to the reductions of water supply ordered by the Seaside Basin Watermaster, our per capita use will go lower without additional cutbacks imposed by a CDO. 95-10 instructed CAW to maximize its Seaside Basin pumping to offset the ordered Carmel River pumping reductions; the adjudication of the Seaside Basin with its establishment of pumping restrictions has frustrated that instruction. The draft CDO acknowledges the fact of the adjudication, and the Watermaster-ordered pumping reductions, but does not take the combination of reductions into realistic or proper account in terms of public health and safety or in terms of achievability in the short term. The combined reductions are the "immediate and substantial reduction(s)" the draft CDO says would be an "unacceptable risk" or threat to public health and safety (p. 48).

It would be arbitrary and arbitrarily punitive to penalize the residents and businesses of the Peninsula, who have done an extraordinary job of reducing water use, by imposing additional cutbacks of the magnitude outlined in the draft CDO. If the CDO were to be adopted as written, the reduction in water supply over the next two years would be 1,115 acre feet (AF), the combined total of the immediate reduction in the base from 11,285 acre feet annually (AFA) to 10,978 AFA (307 AF), immediate reduction of 5% of the new base (549 AF), the annual reductions for the next two years (121 AF each year), and the cutbacks ordered by the Seaside Basin Watermaster (417 AF). This is far in excess of the 5% reduction we testified our industry could adjust to and a far quicker reduction than we contemplated when we testified.

Immediate reduction of Carmel River pumping base is arbitrary, leads to complications

WR 95-10 established a Carmel River pumping base of 11,285 AFA after the two cutbacks in that order. The draft CDO would immediately reduce that base to 10,978, or 307 AFA less. Changing the base would complicate the conservation efforts of CAW and MPWMD and entail revisions of conservation rules and rationing plans adopted by both by requiring rewriting of the rules and reeducation of the public in order to achieve any success.

As the CDO correctly notes (p. 48), conservation efforts depend for success on public education and cooperation. As we testified in the hearings, MCHA was the primary private sector organization working with CAW and MPWMD to achieve the level of education and cooperation that resulted in the water savings already achieved. That was not an easy task and it took years of hard work to make area water users that a regulatory reduction in supply is just as real as a

reduction in supply resulting from drought. Requiring a revision of the conservation rules to 'save' 307 AFA immediately is arbitrary and not realistic; the amount of work changing rules and reeducating water users is enormous and the water savings, by comparison, are not substantial.

Policy acknowledgement of a new water supply, implications for CDO timetable

During the hearings some evidence was offered about how close the Peninsula might be to realizing a new source of water that could legalize the Peninsula's water supply. SWRCB should at least take policy notice of how the possibility of a new supply has come closer and even more realistic.

Three responsible agencies (Marina Coast Water District, Monterey County Water Resources Agency, and Monterey Regional Water Pollution Control Agency) have signed agreements to cooperate in planning new water projects. The California Public Utilities Commission recently adjusted its schedule for finalizing the Environmental Impact Report of CAW's Coastal Water Project and the identified and studied alternatives to January 2010; a finalized and adopted EIR will provide the basis for the three agencies to begin the process of developing water supply projects, particularly a desalination plant to legalize CAW's water supply.

In light of these facts, it seems capricious for SWRCB to impose drastic pumping reductions immediately and even more gradually knowing that substantive water replacement cannot possibly begin before 2016. If the underlying theory is that immediate drastic reductions combined with the more gradual annual reductions will provide an incentive for the area to embrace a new water supply project, it is a flawed theory. The pumping cutbacks in the draft CDO combined with the Seaside Basin cutbacks will only engender anger and resentment, and quite likely resistance to necessary cooperation. As we testified during the hearings, we have been involved for the last two decades in every reasonable effort to secure a new water supply and for the last decade in achieving Peninsula water conservation success; we are, as a consequence, quite familiar with public sentiments and attitudes on water issues.

If a CDO must be issued, it should be more realistic

We have outlined why we believe the CDO should not be issued.

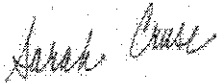
If the SWRCB believes a CDO should be issued, we urge that it be more realistic than the draft CDO at issue now. A CDO should:

- Not order a reduction in the Carmel River base pumping;
- Not order immediate drastic reductions in Carmel River pumping that, when combined with Seaside Basin reductions, pose an immediate and "unacceptable" threat to public health and safety;
- Take into account the substantive progress being made on development of a new water supply and calibrate any pumping reductions to a timetable reflecting a realistic estimate of when replacement water should be available; if necessary, a CDO could indicate that its terms would be revisited after 2016;

- Calibrate pumping reductions to an amount of time necessary to develop the public understanding and cooperation necessary to achieve water use reduction success.

Thank you for the opportunity to participate in the proceedings and to make our comments on the draft CDO. We will attend the September 2nd workshop and will be pleased to answer any questions SWRCB might have.

Sincerely

A handwritten signature in cursive script that reads "Sarah Cruse".

Sarah Cruse, President

Tab 2 - SegTrend Monterey County, CA

Monterey Co. CVB
 For the Month of August 2009

		Occupancy (%)				
Current Month		Trans.	Grp.	Con.	Total	
2008	Mar	40.6	21.9	0.5	63.0	
	Apr	34.8	25.8	0.5	60.9	
	May	37.6	28.2	0.4	66.3	
	Jun	45.5	22.9	0.4	68.7	
	Jul	52.2	27.0	0.4	79.7	
	Aug	57.3	26.6	0.6	84.6	
	Sep	39.3	26.7	0.7	66.7	
	Oct	36.5	28.3	0.7	65.4	
	Nov	30.8	19.1	0.7	50.6	
	Dec	28.9	10.1	0.8	39.8	
	2009	Jan	22.2	18.4	0.7	41.3
		Feb	27.6	20.0	0.7	48.3
Mar		33.0	16.4	0.9	50.4	
Apr		40.0	19.9	0.7	60.6	
May		38.5	17.8	0.6	57.0	
Jun		44.1	17.6	0.4	62.2	
Jul		51.7	22.2	0.4	74.3	
Aug		59.1	14.8	0.4	74.3	
Year To Date						
2007	Aug	37.0	28.2	1.4	66.7	
2008	Aug	40.2	24.9	0.5	65.6	
2009	Aug	39.7	18.4	0.6	58.7	
Running 12 Month						
2007	Aug	35.5	27.3	1.4	64.3	
2008	Aug	38.2	25.0	0.5	63.8	
2009	Aug	37.7	19.2	0.6	57.6	

Source 2009 Smith Travel Research, Inc.