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Submitted by staff
at 11/18/13 Board Meeting
Item 19
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November 18, 2013

David Pendergrass, Board Chair
Board of Directors
Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, CA 93942-0085

Subject: Nov. 18, 2013, Agenda Item 19 – Proposed ordinance No. 158

Dear Chair Pendergrass and Members of the Board of Directors:

These are comments on Item 19 on the November 18 agenda on behalf of Save Our Carmel River, Patricia Bernardi, and The Open Monterey Project (collectively referred to as SOCR). We urge the Board to reject Draft Ordinance No. 158.

Ordinance No. 158 proposes amendments to District Rule 28-B which are inconsistent with CEQA on several grounds. The inconsistencies include lead agency provisions, cumulative analysis of environmental impacts, and appropriate review and mitigation. The ordinance has potentially significant environmental impacts that have not been evaluated and mitigated. The ordinance should be rejected.

The Legislature enacted CEQA in 1970 as a means to force public agency decision makers to document and consider the environmental implications of their actions. (Pub. Resources Code, §§ 21000, 21001; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 254-256.) "The foremost principle under CEQA is that the Legislature intended the act 'to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.'" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390, quoting *Friends of Mammoth v. Board of Supervisors, supra*, 8 Cal.3d 247, 259.)

CEQA describes the required process for lead agency. Public Resources Code section 21067 defines "lead agency" as the agency which has "principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." Under CEQA, the lead agency has responsibility for the process by which the EIR is approved and certified and plays a crucial role in complying with the procedural mandates and substantive obligations of CEQA. When a project involves two or more public agencies, ordinarily only one agency serves as the lead agency. The threshold question is which agency has the principal responsibility for the activity. A public agency with principal responsibility must assume the role of lead agency. It is not lawful to anoint as a lead agency an entity that would otherwise not be qualified to

act as lead agency. Because the underlying purpose of an EIR is to analyze and inform regarding adverse effects to the environment as a whole, the proper lead agency is the one that is in the best position to make such an assessment. So significant is the role of the lead agency that CEQA proscribes delegation. Delegation is inconsistent with the purpose of CEQA. The District documents suggest that the District could reassert lead agency status if it chooses. The suggestion is inconsistent with CEQA and with the language of the ordinance.

The Monterey Peninsula Water Management District was created by the California Legislature and given specific authority and responsibility within the district's boundaries. For water credits and water credit transfers, the Water Management District is the lead agency under CEQA and as such has the responsibility for making required environmental assessments. The Water Management District is the appropriate lead agency for water credits transfers among the jurisdictions it oversees. The water credit transfer program is created by the Water Management District in the District rules. Water credits and water credit transfers would not exist but for the Water Management District rules creating and allowing water credits, and creating and administering a program for water credit transfers. The Water Management District has the overarching authority for water management on the Monterey Peninsula and for water credits and water credit transfers. The District provides oversight to California American Water Company. The cities and County land use jurisdictions do not have the same level of authority as the Water Management District.

The Ordinance as currently written requires that the Water Management District Board of Directors "shall consider the impacts of the application under consideration, as well as cumulative impacts of other transfers, on the water supply." Cumulative impacts are necessary under CEQA and must include a district wide analysis. An analysis of cumulative impacts may not be limited to one jurisdiction. To comply with CEQA, the jurisdictions must review cumulative impacts of the entire district. The jurisdictions do not currently have the data, knowledge, perspective, or expertise to analyze the cumulative impacts. Even if a city attempted to analyze cumulative impacts, a city cannot impose mitigations outside of its jurisdiction. For example, if the impacts were to be felt on the Carmel River environment, or the Seaside Basin, the city could not impose mitigations that might be necessary to mitigate the impacts, if those mitigations fall outside of the city boundaries. For these and other foreseeable scenarios, mitigations would be extra-territorial to the jurisdiction. Each jurisdiction does not have the power to effectively identify adverse environmental impacts or to effectively remedy and mitigate for the harm. The proposed ordinance would create a situation inconsistent with CEQA. Under CEQA, it is critical that the agency performing the environmental review be able to meaningfully address the environmental concerns that might be identified in the EIR. If an agency lacks the authority to meaningfully address the environmental concerns that might be identified in the EIR, then environmental review would be a meaningless exercise.

The ordinance would have a negative impact on public participation and accountability. The MPWMD has authority over the district population, which exceeds 100,000 persons. The MPWMD boundary includes both watersheds that provide the water supply, the Carmel and the Seaside watersheds. The ordinance proposes that decisions would be made by individual jurisdictions, including the cities of Sand City (population 342), Del Rey Oaks (population 1,662), Carmel (population 3,807), Pacific Grove (population 15,407), and the airport district (population 0). Each of the jurisdictions is wholly within one watershed or the other, and only a small part of that watershed. Under that approach, the public process would be compromised, because instead of keeping track of the activities of a single agency, the Water Management District, the public would be tasked with having to monitor the activities of eight different jurisdictions with different rules for environmental review, public notification, exemptions, different city councils, and different staff. The staff of the various land use jurisdictions do not have the technical expertise, factual information, or procedural understanding of water credit transfers, as compared to the Water Management District.

The District has specialized expertise in and knowledge of water demand and water impacts. At the District, the same water management staff have been employed for many years. Since the 1990s, many key Water Management District staff have remained the same – including Ms. Pintar as Water Demand Manager, Ms. Ayala as senior water demand staff, Ms. Stern as projects and permits manager and EIR coordinator, Joe Oliver as hydrogeologist, hydrologist Thomas Lindberg, engineer Larry Hampson, David Laredo as legal counsel, and numerous others. They were present in the early 2000s when the District dealt with the challenges to the elimination to the water credit transfer program, and also in 2004, 2005 and 2006 when SOCR challenged the actions of the Water Management District and the City of Monterey to transfer water use credits. Some members of the Board are also the same; Directors Pendergrass (mayor of Sand City) and Potter (County supervisor) have both been on the Board since the 1990s. Directors Lehman (starting in 2001) and Markey (starting in 2003) were on the Board in 2004, 2005 and 2006. Those four directors – a board majority – are familiar with the issues raised by the public in the early 2000s and with the transfer and the resulting lawsuit in 2004, 2005 and 2006.

In contrast, none of the mayors are the same as in the early 2000s, and none of the City Council majorities or Airport District majority were present in the early 2000s. The Monterey City Council majority was not on the Council in 2004 through 2006. In other words, the jurisdictions do not have the expertise, knowledge of the history, the issues, the facts, and the understanding of the problems with water credit transfers or the applicable statutory scheme, or the concerns of the resource agencies.

The Water Management District staff and Board are the most familiar with the data, the issues, and the environmental concerns involved in water credits and water credit transfers than the jurisdictions (cities and County) in the District boundary. The

jurisdictions are generalists, like all cities and counties – they do not possess the specialized expertise of the District. Many years ago, the MCWRA ceded its authority of Peninsula water management issues to the District, and does not possess knowledge, information or data even close to the District. We incorporate by reference the MOU between the MPWMD and the MCWRA with regard to the separate authority of each agency, and the MPWMD's sole authority within its boundaries for water management. The MCWRA has a role simply like that of the cities and other land use jurisdictions within the District.

The ordinance would balkanize the management of the Peninsula's finite water resources, which is inconsistent with the mandates given to the District by the California Legislature. The ordinance would interfere with effective regional water management. The ordinance would allow for contradictory results from CEQA analyses performed by the jurisdictions, based solely on which jurisdiction performs the analysis. It would also be ineffective because each jurisdiction would have to perform its own environmental analysis (an EIR). For example, one city could not rely on another city's EIR for water credit transfers. Reducing the District's review to a ministerial review performed by staff, in place of the current requirement for a discretionary review before the Board of Directors with a noticed public hearing, would have significant unanalyzed environmental and public policy consequences.

Because the ordinance proposes to have the decision making done at the staff level, instead of the District Board, the public would not have the public notice that is currently provided for matters that come before the District Board. There is no advance notice required for decisions of the District's General Manager. Thus, the public would not know when or if a water credit transfer had been submitted to the General Manager, or when the General Manager would make a decision on the item. There is only a short period in which to file an appeal. The General Manager could make a decision any day of any month, and the public would have to constantly seek information and try to find out information about pending water credit transfers. The General Manager would make his decision in secret, without a public hearing, based on documents that are not posted on the District website. This proposed procedure would be opposite to Board decisions, which are made at noticed, open and public meetings, on regularly meeting dates, which the public knows about, the meetings agendas and packets are available online in advance at the District website, and distributed to the public.

As a separate concern, the current process requires a hearing before the Board of Directors at no cost to the public. Under the proposed ordinance, the public would be required to file an appeal in order to get the issue before the Board. That process would chill and possibly eliminate Board review, because an appeal to the Board costs hundreds of dollars initially, and the total cost for the appeal could easily be in the many thousands of dollars, with no cap or limit, based on the District's current fee table (enclosed). Having been on the Board as an elected Director from 1999 to 2003, and having represented applicants with appeals before the Board since 2003, I know that

appeal hearings are frequently lengthy, are often continued from one meeting to the next, with lengthy hearings at multiple meetings, and can be very time consuming for the District Board, District staff, and District legal counsel.

The District's only studies on water credit transfers have shown that there is a higher net water demand after the transfers than before the transfers. Therefore, anything that would enable water credit transfers without a meaningful look at the net impacts of all transfers within the District would not provide the meaningful information envisioned by CEQA. The records in the District's possession show that water credit transfers – and the resulting intensification of water demand – would violate the intent and spirit of the SWRCB Cease and Desist Order, which is intended to stop intensification of water use within the CalAm service area in the District.

The ordinance proposes to piecemeal, or segment, the environmental review in a manner inconsistent with CEQA.

The claimed CEQA exemption for the ordinance is not appropriate. No CEQA exemption applies to the adoption of ordinance 158. The proposed amendments to Rule 28 do in fact contemplate approval of a transfer, which is why the rule exists, and which is what the ordinance proposes to facilitate and further. The proper time to analyze environmental impacts is now, at this stage. The ordinance is similar to a rezoning or other legislative action that sets the stage for future foreseeable activities.

This comment letter relies on and incorporates the certified administrative record in *Save Our Carmel River v. Monterey Peninsula Water Management District* (2006) 141 Cal.App.4th 677 (Monterey Superior Court case no. M72061), the State Water Resources Control Board Cease and Desist Order against CalAm, which we present here as if fully set forth herein. The District has these documents in its possession. If the District wants us to provide it with copies before the District will include them in the administrative record, please let us know and we will be happy to do so.

It appears that there is a conflict of counsel that might bar or invalidate this action. We have raised the issue with Mr. Laredo.

Before the Water Management District proceeds, the District should consider first notifying the jurisdictions that the proposed ordinance would assign a new task to the jurisdictions, would pose a new risk to the jurisdictions, and the ordinance would require the jurisdictions to assume all risk and responsibilities arising out of the jurisdictions' actions on water credit transfers.

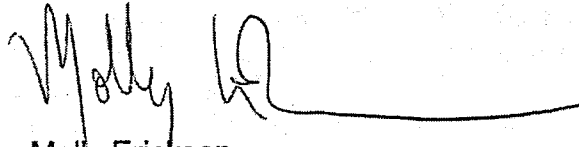
Please promptly advise this Office if the District files a notice of exemption or any other CEQA document; please email the filing to us the day it is filed.

David Pendergrass, Board Chair
Monterey Peninsula Water Management District
November 18, 2013
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Thank you for considering these comments. We regret that we cannot be there in person at tonight's Board meeting due to pre-existing commitments. We note that the sole public notification in the newspaper of tonight's hearing was printed in this morning's Monterey Herald.

Very truly yours,

LAW OFFICES OF MICHAEL W. STAMP

A handwritten signature in black ink, appearing to read "Molly Erickson", followed by a long horizontal line extending to the right.

Molly Erickson
Michael W. Stamp

Encl.: Printouts from MPWMD website regarding rules and regulations, the role of the MPWMD, fee table, and similar basic information about the MPWMD. These documents document the statements made in this letter.

ORDINANCE NO. 107

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
RESCINDING ORDINANCE NO. 102 AND REINSTATING RULE 28, WATER USE
CREDIT TRANSFERS**

FINDINGS

1. The Water Management District 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. The Water Management District has general and specific power to cause and implement water conservation activities as set forth in Sections 325 and 328 of the Monterey Peninsula Water Management District Law.
3. This ordinance reinstates District Rule 28 that allows transfer of water credits from one commercial site to another and that allows water to be transferred from a commercial site directly into a jurisdiction's water allocation.
4. This ordinance shall amend and republish Rule No. 28 ("Transfer") of the Rules and Regulations of the Water Management District.
5. This ordinance resolves the cities litigation with the Monterey Peninsula Water Management District regarding environmental review of the water credit transfer ban. Reinstatement of the transfer credit rules is a short-term interim measure until an EIR on the transfer program can be certified. Two detailed studies exist that concluded that water credit transfers resulted in system-wide increased water usage following the transfers than prior to the transfers. Further, this Board is very concerned that the transfer credit program harms the environment, has been subject to abuses, and violates State Water Resources Control Board Order 95-10. It is the Board's intention that the EIR be completed as quickly and accurately as possible, and that the water credit transfer program will be amended promptly thereafter to address concerns about negative environmental impacts and public fairness.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This ordinance shall be known as the Water Credit Transfer Reinstatement Ordinance of the Monterey Peninsula Water Management District.

Section Two: **Purpose**

This ordinance republishes water use credit transfer provisions formerly set forth in District Rule 28.

Section Three: **Rescind Ordinance No. 102**

This ordinance rescinds Ordinance No. 102, adopted on February 28, 2002.

Section Four: **Rule 28 Reinstated**

District Rule 28 shall read as follows:

A. TRANSFER LIMITATION

Any permit issued pursuant to these regulations may be transferred from one person to another, upon written notification to the District, except as follows:

1. Permits may not be transferred from one location to another, except as provided by Part B of this Rule;
2. Permits may not be transferred when the General Manager determines within thirty (30) days of the written notification required by this rule that the transfer may allow or facilitate increased water consumption of a water distribution system.
3. Transferred permits shall be subject to all conditions attached to the original permit. Applicants who are not allowed to transfer a permit under this rule may apply for a new permit or an amendment to the existing permit pursuant to Rule 23. Determinations of the General Manager under this rule, either allowing or refusing permit transfer, may be appealed to the Board pursuant to Rule 70.

B. PROPERTY-TO-PROPERTY AND PROPERTY -TO-JURISDICTION TRANSFERS OF WATER USE CREDITS FOR COMMERCIAL AND INDUSTRIAL USES

Water use credits for existing water use which has been allowed by the District on or after January 1, 1985, may be transferred from one property to another for commercial and industrial connections pursuant to this Rule. Commercial and industrial water credits may also be transferred directly into a jurisdiction's allocation. Open space and residential water use shall not be transferred. The following conditions shall apply:

1. Water use credit transfers shall only occur within a single jurisdiction. No inter-jurisdictional transfer shall be allowed. Property-to-property transferred water credits shall not have any impact on a jurisdiction's allocation. Property-to-jurisdiction transfers shall increase a jurisdiction's available allocation.
2. Water use credit transfers shall only occur within a single water distribution system. No inter-system transfer shall be allowed.
3. Water use credit transfers shall only occur with the prior approval of the city, county or airport district.

4. Water use credit transfers shall only be allowed from an existing commercial or industrial use, and must be applied to the intensification of another existing commercial or industrial use or added to a jurisdiction's allocation. Other than transfers which add to a jurisdiction's allocation, transfer credits shall not originate from, or be transferred to any residential use. Transfer credits shall not derive from any prior open space water use.
5. Property-to-property water use credit transfers shall only be used for intensification purposes. New water connections shall not be issued based upon a property-to-property transferred water use credit.
6. Property-to-property commercial water use credit transfers shall only enable intensification of an existing commercial or industrial water use capacity, as proposed by a current application for a water permit. Transfers shall not provide water use capacity for new commercial or industrial water meter connections. Transferred water credits shall not be "banked" for future use at any new or different site.
7. The use of credits resulting from a property-to-jurisdiction transfers shall be at the discretion of the jurisdiction.
8. All water use credit transfers shall originate only from prior documented commercial water use capacity and shall be subject to each and every limitation on the calculation of water use credits set forth in Rule 25.5.
9. All transfers of water use credits shall occur only by written (and recorded) agreement of (1) the owner of record for each parcel from which the transfer originates and (2) the owner of record for each parcel receiving a transferred water credit. The originating site agreement shall confirm that the transfer of water credit is irrevocable, shall quantify remaining water use capacity required by the originating parcel(s), and acknowledge that any intensification of water use capacity on the originating site thereafter shall result in additional connection charge fees. The agreements recorded on both the originating site and the receiving site shall contain a declaration made by the owner of record under penalty of perjury that, other than reimbursement for the Rule 24 connection fee that would apply to the water use capacity, no money or other valuable consideration has been given or received in exchange for the water credit transfer. If all prior water use capacity is transferred from a site (due to demolition of all structures on that site), the recorded agreement and notice shall consent to permanent removal of the meter connection from the originating site, and acknowledge that the placement of a new meter shall be limited due to unavailability of water.
10. Transfer of water use credits shall only occur upon approval by the District. The District shall have sole and exclusive authority to determine the water use capacity which cannot be transferred by reason of capacity requirements for the originating site. The District shall have sole and exclusive authority to determine the water use capacity requirements for the receiving site. The District shall not approve any water credit transfer where money or other valuable consideration has been given in exchange for the water credit transfer. The District shall not approve any capacity for expanded water use deriving from a transferred water credit in any circumstance where money or other valuable consideration has been given in exchange for use of the water credit. These limitations

shall nonetheless allow the recipient of a water credit transfer to reimburse the donor of that credit for Rule 24 connection fees that would apply to the water use capacity.

1. Violation of the prohibition on the transfer of water credit for money or other valuable consideration shall result in immediate revocation of the transfer credit.
- B. Violation of the prohibition on the transfer of water credit for money or other valuable consideration is a misdemeanor as provided in Section 256 of the Monterey Peninsula Water Management District Law.
11. Transfer of water use credits shall not be approved by District staff if the effect of the transfer shall cause the originating site to have insufficient water credit to meet the water use capacity requirements of all existing structures on the transferring property site. If all prior water use is transferred from a site (due to demolition of all structures), the transfer shall be approved only upon the removal of the meter connection from the originating site, and the recordation of the notice specified above.
12. The effect of any approved water credit transfer shall be the irrevocable extinction of any right or entitlement to the actual water use, water use capacity, or water credit which has been transferred from the originating (transferring) site.
13. Before any water use credit transfer shall occur, the transfer fee required by Rule 60 for each originating site shall be paid by the applicant.

(Added by Ordinance No. 1 (2/11/80); formerly Rule 223; renumbered by Ordinance No. 6 (5/11/81); formerly Rule 27, amended by Ordinance No. 8 (1/14/81); amended by Ordinance No. 71 (12/20/93); amended by Ordinance No. 79, (9/18/95); amended by Ordinance No. 97 (3/19/2001)

Section Five: **Publication and Application**

The provisions of this ordinance shall cause the republication and amendment of the permanent Rules and Regulations of the Monterey Peninsula Water Management District.

Section Six: **Effective Date and Sunset**

This ordinance shall take effect at 12:01 a.m. on the 30th day after it has been enacted on second reading.

This Ordinance shall not have a sunset date.

Section Seven: **Severability**

If any subdivision, paragraph, 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 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 by Director Pendergrass, and second by Director Edwards, the foregoing ordinance is adopted upon this 19th day of May, 2003, by the following vote:

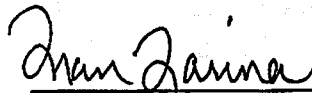
AYES: Director Edwards, Henson, Lehman, Lindstrom and Pendergrass

NAYS: Director Erickson

ABSENT: Director Potter

I, Fran Farina, 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 19th day of May 2003.

Witness my hand and seal of the Board of Directors this 20th day of May 2003.



Fran Farina, Secretary to the Board

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MPWMD

UNIQUE FUNCTIONS OF THE DISTRICT *(not duplicated by other entities)*

- Local, integrated control of resources, including groundwater
- Computer modeling of water resources system
- Hydrologic monitoring (stream gaging, ground water monitoring)
- Metering program for all non Cal-Am wells
- Water connection permits
- Allocation of water to jurisdictions
- Water conservation ordinances and inspections
- Determine drought emergency and impose rationing program
- Carmel River mitigation programs (fish, riparian, lagoon)
- River works (erosion control)
- Approving new water distribution systems and expansions
- Financing of Pebble Beach Reclamation project
- Sales of reclaimed water

[MPWMD Home Page](#) | [Functions of MPWMD ?](#) | [Unique Functions](#)

Contact MPWMD with questions about this web site.

MPWMD

RESPONSIBILITY FOR THE PUBLIC TRUST

The District is mandated by state statute to provide integrated management of all water resources for the Monterey Peninsula. In performing this management responsibility, the District has an obligation to ensure that the quantity of water use does not harm public trust resources, and that all water use is reasonable and beneficial. The District has a duty under the California Constitution and by statute to balance public trust requirements under a doctrine of reasonableness.

The phrase "public trust" refers to a legal doctrine originating from Roman Law, and means public rights. While the doctrine primarily derives from common law, it is occasionally referenced in the California Constitution (Article 10, section 3) and by statute (Fish and Game Code, section 5937)

The public trust doctrine holds that the State is the guardian or trustee of certain natural resources (such as water, fish, riparian vegetation and aesthetics), and although individuals may obtain a private right to use these resources, those private rights cannot be exercised in a manner that violates the public's interest.

Just as the State of California created the District, by statute, to manage water resources on the Monterey Peninsula, a special or "fiduciary" duty has been imposed on the District to advance and respect the purposes of the public trust. This duty prevents limiting, diminishing or alienating the trust resource.

[MPWMD Home Page](#) | [Functions of MPWMD ?](#) | [Responsibility of MPWMD](#)

Contact MPWMD with questions about this web site.

MPWMD

FUNCTIONS OF THE DISTRICT

- MPWMD legislative functions
 - Unique functions of the district
 - Responsibility for the public trust
-

[MPWMD Home Page](#) | [What's MPWMD ?](#) | [Functions of MPWMD](#)

Contact MPWMD with questions about this web site.



Mission Statement, Vision Statement and Strategic Goals

Adopted by MPWMD Board of Directors on April 15, 2013

Mission Statement

The mission of the Monterey Peninsula Water Management District is to promote or provide for long-term sustainable water supply, and to manage and protect water resources for the benefit of the community and the environment.

Vision Statement

The MPWMD: (1) Will strive to ensure a public role in development, ownership, and oversight of water supply solutions in collaboration with private or other public entities, resulting in sustainable, legal, affordable, and environmentally responsible water supply, consistent with adopted general plans; (2) Shall carry out its leadership role in water resource management in a fiscally responsible and professional manner.

One-Year Strategic Goals:

- 1) Continue to Advance Water Supply Projects
- 2) Work With Community to Protect Investment in Water Credits and "Smart" Development
- 3) Revise Rationing Program in Advance of "Regulatory Drought"
- 4) Streamline Essential Services and Organization
- 5) Continued Progress in Public Outreach Efforts

Three-Year Strategic Goals:

- 6) Develop Comprehensive Strategy for Permit 20808-B
- 7) Prepare for Allocation of "New Water"
- 8) Establish a Long-Term Strategy for Los Padres Dam

MPWMD BOARD OF DIRECTORS

David Laredo
District Counsel

David Stoldt
General Manager

Community
Relations Liaison
Unfunded

Arlene Tavani
Executive Assistant

Suresh Prasad
Administrative Services Mgr/
Chief Financial Officer

Larry Hampson
Planning & Engineering Mgr/
District Engineer

Joe Oliver
Water Resources Manager

Stephanie Pintar
Water Demand Manager

Mark Dudley
Information Technology
Manager

Henrietta Stern
Project Manager.

Jonathan Lear
Senior Hydrogeologist

Conservation Analyst
Unfunded

Eric Sandoval
GIS Specialist

Thomas Christensen
Riparian Projects
Coordinator

Gregory James
Hydrography Programs
Coordinator

Gabriela Ayala
Conservation
Representative II

Yolanda Munoz
Accountant

Sr. Water Resources
Engineer
Unfunded

Thomas Lindberg
Associate Hydrologist

Michael Boles
Conservation
Representative I

Cynthia Schmidlin
Human Resources
Analyst

Mark Bekker
River Maintenance
Specialist

Kevan Urquhart
Senior Fisheries
Biologist

Stevie Kister
Conservation
Representative I

Sara Reyes
Office Services
Supervisor

Matthew Lyons
River Maintenance
Worker

Beverly Chaney
Associate Fisheries
Biologist

Debra Martin
Conservation
Technician II

Paula Soto
Office Specialist I

Cory Hamilton
Associate Fisheries
Biologist

Conservation
Technician I/II
Unfunded

MPWMD

REGULATORY SETTING

State Water Resources Control Board:

- Has authority over "surface waters of the State."
- In July 1995, determined that 69% of the community's water supply is being taken without a valid right and that 10,730 acre-feet (AF) per year must be replaced.
- Order WR 95-10 to Cal-Am includes goals for reducing water withdrawals, conservation programs, and continuation of the District's 5-Year Mitigation Program (portions that District does not continue after mid-1996).

California Public Utilities Commission:

- Responsible for regulating Cal-Am as a public utility (water service and rates).
- Determines how Cal-Am will be compensated for infrastructure improvements, conservation programs and other operational requirements.
- Determines rationing (for Cal-Am only) if no District.

California Department of Fish and Game:

- Quarterly schedule for water production from the Carmel river basin and the Seaside Coastal groundwater basin.
- Permits for river works.

[MPWMD Home Page](#) | [What's MPWMD ?](#) | [Regulatory setting](#)

Contact MPWMD with questions about this web site.

MPWMD

THE BASICS

Agency Formed:	June 6, 1978	
Enabling Legislation:	West's California Water Code, Appendix Chapters 118-1 to 118-901	
Area Served:	Carmel-by-the-Sea, Del-Rey Oaks, Monterey, Pacific Grove, Seaside, Sand City, Monterey Peninsula Airport District and portions of Unincorporated Monterey County including Pebble Beach and Carmel Valley.	
Population within District:	104,129 according to 2010 U.S. Census	
Number of Employees:	Twenty-eight on October 3, 2011	
FY 2010-2011 Budget:	\$9,674,200	
Source of Revenue	<ul style="list-style-type: none"> • Property Tax • User Fees • Water Connection Charges • Investments • Grants • Permit Fees • Project Reimbursements • Other 	
Legislated Function	1.	Augment the water supply through integrated management of ground and surface water resources
	2.	Promote water conservation
	3.	Promote water reuse and reclamation of storm and wastewater
	4.	Foster the scenic values, environmental quality, native vegetation, fish and

wildlife, and recreation on
the Monterey Peninsula
and in the Carmel River
basin.

The District manages the production of water from two sources: surface water from the Carmel River stored in San Clemente and Los Padres Reservoirs; and ground water pumped from municipal and private wells in Carmel Valley and the Seaside Coastal Area.

[MPWMD Home Page](#) | [What's MPWMD ?](#) | [Basics](#)

Contact MPWMD with questions about this web site.


MPWMD

MISSION STATEMENT

The mission of the Monterey Peninsula Water Management District is to promote or provide for long-term sustainable water supply, and to manage and protect water resources for the benefit of the community and the environment.

[MPWMD Home Page](#) | [What's MPWMD ?](#) | [Mission Statement](#)

Contact MPWMD with questions about this web site.


 MONTEREY PENINSULA
WATER
 MANAGEMENT DISTRICT

5 Harris Court, Building C, P.O. Box 85, Monterey, CA 93942-0085 (USA)
 Water Permit & Conservation Office: (831) 658-5601 Fax: (831) 644-9558
 Administrative Offices: (831) 658-5600 Fax: (831) 644-9560

MISSION STATEMENT: TO MANAGE, AUGMENT, AND PROTECT WATER RESOURCES FOR THE BENEFIT OF THE COMMUNITY AND THE ENVIRONMENT

MPWMD	Meetings
<ul style="list-style-type: none"> • About MPWMD • Director Division Boundaries • Staff Contacts for Specific District Functions • Directions to the Ryan Ranch Office • Pictures from Around the District 	<ul style="list-style-type: none"> • Board Meeting Agendas and Packets <ul style="list-style-type: none"> ▶ Television Broadcast Schedule for Board Meetings • Committee Meeting Agendas and Packets • Carmel River Advisory Committee • EIR Meeting Update
Important Announcements	Water Supply Projects
<ul style="list-style-type: none"> • California American Water General Rate Case and Conservation Applications • CEQA Notices • District Activities ~ What's New? • Draft EIR for the 2007 Monterey County General Plan • General Manager's Weekly Summary to the Board of Directors • MPWMD Strategic Plan Adopted December 14, 2009 • Seaside Groundwater Basin – Update • Stage 1 Conservation Requirements • SWRCB Final Cease & Desist Order WR 2009-0060 Against California American Water • Update on Regional Water Project 	<ul style="list-style-type: none"> • Draft EIR for the 2009 Coastal Water Supply Project • Comparative Matrix of Water Supply Options • Water Project EIR Notice of Preparation • Seaside Groundwater Basin Aquifer Storage and Recovery Project (3 Mb file) • Seawater Desalination Projects - Reports • Receive Phase 1 Aquifer Storage and Recovery Project Water Year 2009 Summary Report (5MB pdf)
Forms	Finance & Administration
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Programs	Rules and Regulations
<ul style="list-style-type: none"> • Mitigation Program (Environmental Protection) <ul style="list-style-type: none"> ○ Water Conservation ○ Field Activities Overview ○ Carmel River Management ○ Integrated Regional Water Management 	<ul style="list-style-type: none"> • Rules and Regulations • Ordinances • Carmel River Riparian Corridor Regulations • Schedule of Fines • Administrative Hearing Guidelines • Meeting Rules
Water Permits & Conservation	Water Wells
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Map Gallery	Water Resources Management

- [Map Gallery](#)
 - [MPWMD Boundary](#)
 - [Voter Divisions](#)

- [Annual Water Production Reporting](#)
- [Seaside Groundwater Basin – Update](#)
- [SWRCB ORDER 95-10](#)
- [Fishery](#)
 - [San Clemente Dam Fish Counter](#)
 - [Los Padres Dam Fish Trap](#)
- [Carmel River Lagoon - Surface Water Dynamics](#)
- [Carmel River Lagoon - Water Levels](#)
- [Carmel River Flows](#)

Document Library

- [News Releases](#)
- [2001 Redistricting](#)
- [Carmel River Dam SEIR - November 1998](#)
 - [Executive Summary](#)
 - [Chap 1-3](#)
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- [MPWMD Water Allocation Program Final EIR – April 1990](#)
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- [SWRCB ORDER 95-10](#)
- [Annual Reports](#)
- [Issue Papers](#)
- [Current topics](#)
- [Draft EIR for the 2007 Monterey County General Plan](#)

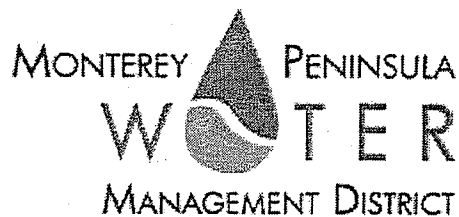
Human Resources

- [Employment Opportunities](#)
- [MPWMD Organization Chart](#)

Contacts

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Fees and Charges Table (Effective July 20, 2010)

Action		Fee
<i>Action on any Appeal/Variance</i>		
1	Appeal for Site with Water Use Capacity less than one-half (0.5) Acre-Foot annually (Rule 70)	\$250 plus \$70/hour for more than 10 hours
2	Appeal for Site with Water Use Capacity greater than one-half (0.5) Acre-Foot but not more than one (1.0) Acre-Foot (Rule 70)	\$500 plus \$70/hour for more than 10 hours
3	Appeal for Site with Water Use Capacity greater than one (1.0) Acre-Foot annually (Rule 70)	\$750 plus \$70/hour for more than 10 hours
4	Short-Term Variance (Rule 91)	\$125
5	Variance for Site with Water Use Capacity less than one-half (0.5) Acre-Foot annually (Rule 90)	\$250 plus \$70/hour for more than 10 hours
6	Variance for Site with Water Use Capacity greater than one-half (0.5) Acre-Foot but not more than one (1.0) Acre-Foot (Rule 90)	\$500 plus \$70/hour for more than 10 hours
7	Variance for Site with Water Use Capacity greater than one (1.0) Acre-Foot annually (Rule 90)	\$750 plus \$70/hour for more than 10 hours
<i>Action on any Permit</i>		
8	Administrative fee to monitor, review and enforce applications and/or Permits for Special Circumstances (Rule 24)	\$1400 plus \$70/hour for more than 20 hours
9	Amendment to a Non-Residential Water Permit (Rule 23)	\$140 per amendment plus \$70/hour for more than 2 hours
10	Amendment to a Residential Water Permit (Rule 23)	\$105 per amendment plus \$70/hour for more than 1.5 hours
11	Application for Conditional Water Permit (Rule 23)	\$350 per structure plus \$70/hour for more than 5 hours
12	Application Fee Deposit to review "Pre-Application Request Form" for WDS, and determine Permit review level (Rule 21)	\$665 per Pre-Application Request Form plus \$95/hour for more than 7 hours; recovery for other MPWMD actual direct costs will be additional if not covered by the initial \$665 fee; unused funds will be refunded or applied to the Application Fee
13	Fee for Confirmation Exemption letter for WDS (Rule 22)	Fee included in Pre-Application Request Form above; fee must be paid to receive written confirmation
14	Application Fee Deposit to Create/Establish or Amend a WDS, Level 1 Permit (Rule 22)	\$665 per Application plus \$95/hour for more than 7 hours; recovery for other MPWMD actual direct costs will be additional if not covered by the initial \$665 fee; unused funds will be refunded
15	Application Fee Deposit to Create/Establish or Amend a WDS, Level 2 Permit (Rule 22)	\$2,850 per Application plus \$95/hour for more than 30 hours; recovery for other MPWMD actual direct costs will be additional if not covered by the initial \$2,850 fee; unused funds will be refunded
16	Application Fee Deposit to Create/Establish or Amend a WDS, Level 3 or 4 Permit (Rule 22)	\$3,800 per Application plus \$95/hour for more than 40 hours; recovery for other MPWMD actual direct costs will be additional if not covered by the initial \$3,800 fee; unused funds will be refunded



Fees and Charges Table (Effective July 20, 2010)

Action	Fee	
17	WDS Permit Pre-Application Consultation Fees (Rule 22)	There shall be no charge for the first hour of consultation with MPWMD staff regarding the WDS Permit process. A Pre-Application Request Form and associated fee must be submitted after the first hour unless otherwise determined by the General Manager due to unusual circumstances
18	Application to Create/Establish a Water Distribution System or Amend a Water Distribution System Creation Permit – Deposit for Unusually Complex Projects: “Unusually complex projects” are defined as projects requiring MPWMD staff time in excess of the hours stated in the Application Fee to Create a Water Distribution System and the Application Consultation Deposit Fee above. When the hours stated in the Application Fee to Create a Water Distribution System and the Application Consultation Deposit Fee are used up, the Applicant must pay an additional deposit for MPWMD staff time anticipated to complete the Permit process, as determined on a case-by-case basis by the General Manager (Rule 22)	Determined on a case-by-case basis by the General Manager
19	Application to Create/Establish a Water Distribution System or Amend a Water Distribution System Creation Permit – Legal Fees: Any legal work performed by MPWMD Counsel associated with the Application is charged to the Applicant at actual cost, based on the hourly rate of retained MPWMD legal counsel at the time services are rendered (Rule 22)	Actual cost, based on the hourly rate of retained MPWMD legal counsel at the time services are rendered
20	Application to Create/Establish a Water Distribution System or Amend a Water Distribution System Creation Permit – Unused Funds (Rule 22)	Unused deposits or Application fee will result in a refund of unused funds to the Applicant
21	Water Permit to Reinstall Meter (Former use documented under Rule 25.5)	No Fee
22	Application to Split an Existing Meter	No Fee
23	Application for Temporary Water Permit (Rule 23)	\$350 per structure plus \$70/hour for more than 5 hours
24	Application for Non-Residential Water Permit (Rule 23)	\$350 per structure plus \$70/hour for more than 5 hours
25	Plan Check for Non-Residential Waivers	\$105 per structure
26	Application for Residential Water Permit (Rule 23)	\$210 per Dwelling Unit plus \$70/hour for more than 3 hours
27	Plan Check for Residential Waivers	\$105 per Dwelling Unit
28	Connection Charges (Moderate Income Housing) (Rule 24.5)	50% of Connection Charges set pursuant to Rule 24
29	Connection Charges – (Low-Income Housing) (Rule 24.5)	Exempt from Connection Charges set pursuant to Rule 24
30	Connection Charges - Residential and Non-Residential Water Permits	See Rule 24
31	Recalculation of Final Connection Charges (Rule 23)	\$70 per hour of staff time for all necessary efforts in excess of five hours per Site

Fees and Charges Table (Effective July 20, 2010)

Action		Fee
32	Direct Costs - Publication Expenses, Filing Fees, Etc. (Rule 60)	Actual cost incurred by District - Applies to Water Distribution System Permits only
33	Permit Fee Payment Plans (Limited to California Non-Profit Public Benefit Corporations and requires Board approval and finding of substantial financial hardship) (Rule 24)	Deferred interest rate set by the Board
34	Pre-Application Consulting relating to Water Permits (First 30 minutes free) (Rule 20)	\$210 plus \$70 per hour for more than 3 hours
35	Refund of Connection Charges (Rule 24)	\$70 processing fee
36	River Work Permits (see separate list below)	
37	Water Entitlement Related Activity - (see separate list below)	
38	Water Use Credits - On-Site Credits (see separate list below)	
39	Water Use Credits - Transfers (see separate list below)	
<i>Document Preparation, Processing, Review or Retrieval (Rule 60)</i>		
40	Deed Preparation and Review by Staff	\$105 per transaction. Included in Standard Water Permit processing fees
41	Direct Costs -- Publication Expenses, Etc.	Actual cost incurred by District
42	Direct Costs for Deed Restrictions -- Courier Charge, Federal Express	Actual cost incurred by District when less than three deed restrictions are being transported
43	Direct Costs for Deed Restrictions - Courier Charge, Expedited Service	\$110 per occurrence. Charged the hourly rate of \$70 per hour for MPWMD staff time, including direct costs incurred from courier service
44	Document Recordation (if separate from review or preparation)	Actual cost incurred by District (document lengths vary)
45	Legal Review performed by MPMWD Counsel on Deed Restrictions Related to Appeals, Permits, Variances, Water Use Credits, or other Activities	Charged at the hourly rate of retained MPWMD legal counsel at the time services are rendered
<i>Expanded Water Conservation and Standby Rationing Plan</i>		
46	Water Waste Notification Processing (first notice) (Rule 171)	No charge
47	Water Waste Fee (each Flagrant Violation) (Rule 171)	\$50 per occurrence
48	Water Waste Notification Processing (second and subsequent violation) (Rule 171)	No charge
49	Water Waste Fee (second and subsequent violations within 18 months of original violation) (Rule 171)	\$150 per occurrence
50	Misrepresentation of resident survey information during Stage 4, 5, 6 and 7 (Rule 170)	\$250 for each offense. Each separate day or portion thereof during which any violation occurs or continues without a good-faith effort by the responsible Water User to correct the violation. See Rule 170.
<i>Publication Fees</i>		
51	MPWMD Rules & Regulations (Rule 60)	\$27 per copy
52	Photocopies (Rule 60)	Ten (10) cents per page
53	Well Registration Form (Rule 52)	\$25 per Form
<i>Rationing Liens (Rule 60)</i>		
54	Deed Preparation (Lien Release) and Review by Staff	\$105 per transaction

Fees and Charges Table (Effective July 20, 2010)

Action		Fee
55	Direct Costs for Deed Restrictions - Courier Charge, Federal Express	Actual cost incurred by District when less than three deed restrictions are being transported
56	Document Recordations (if separate from review or preparation)	Actual cost incurred by District
57	Direct Costs for Deed Restrictions - Courier Charge, Expedited Service	\$110 per occurrence. Charged the hourly rate of \$70 per hour for MPWMD staff time, including direct costs incurred from courier service
58	Legal Review performed by MPWMD Counsel on Deed Restrictions Related to Appeals, Permits, Variances, Water Use Credits, or other Activities	Charged at the hourly rate of retained MPWMD legal counsel at the time services are rendered
<i>Rebate Processing</i>		
59	Application for Rebate	No charge
<i>River Work Permits (Rules 126 and 127)</i>		
60	Minor River Work	\$25 per application
61	River Work Permit	\$50 per application
62	Emergency River Work	\$50 per application
63	Unusually Complex Applications	\$70 per hour for MPWMD staff time in excess of five (5) hours per application, including direct costs incurred
<i>Inspection Activities (Rule 110)</i>		
64	Cancellation of Inspection (less than 24 hours notice)	\$70 per inspection
65	No-Show; Failure to Provide Access for Scheduled Inspection	\$70 per inspection
66	Conservation Verification Inspection Pursuant to Rule 143 and 144 (Retrofit of Existing Commercial Uses and Change of Ownership or Use)	No Charge
67	Site Inspection (pre-application, or not associated with a planned application, or inspection to document Non-Residential retrofit pursuant to Rule 25.5)	\$105 per inspection
68	Re-Inspection (original inspection not in compliance)	\$105 per inspection
69	Repeat Inspection (overlooked fixtures or failure to show all fixtures)	\$70 per inspection
<i>Variance</i>		
70	See "Action on any Appeal/Variance" section, above.	
<i>Water Use Permit Fees (Rule 23.5)</i>		
71	Amendment to a Water Use Permit (Water Entitlement Process) (also may require Connection Charges pursuant to Rule 24)	\$350 plus \$70/hour for more than 5 hours
72	Application for Water Use Permit (Water Entitlement Process) (also may require Connection Charges pursuant to Rule 24)	\$210 per Site plus \$70/hour for more than 3 hours; also see Rule 24
73	Water Use Permit Monitoring (Water Entitlement Process) (Rule 23.5)	\$70 plus \$70/hour for more than 1 hour
74	3rd Party Consulting or Ancillary Costs (Rule 23.5)	Actual cost incurred by District
75	Legal work performed by MPMWD Counsel on Water Entitlement Related Actions (Rule 23.5)	Charged at the hourly rate of retained MPWMD legal counsel at the time services are rendered

Fees and Charges Table (Effective July 20, 2010)

Action		Fee
76	Direct Costs – Courier Charge, Federal Express Charges	Actual cost incurred by District when less than three deed restrictions are being transported
<i>Water Use Credits and On-Site Credit Activity (Rule 25.5)</i>		
77	Extension of a prior documented On-Site Water Use Credit	\$70 plus \$70 per hour for more than 1 hour
78	Documentation of Water Use Credit -- Non-Residential (Rule 25.5)	\$105 plus \$70 per hour for more than 1.5 hours
79	3rd Party Consulting or Ancillary Costs incurred to verify water use savings	Actual cost incurred by District
<i>Water Credit Transfer Activity (Rule 28)</i>		
80	Application to Transfer a Water Use Credit (originating Site)	\$2100 plus \$70 per hour for more than 30 hours
81	Application for a Water Permit utilizing a Water Credit Transfer (receiving Site)	\$700 plus \$70 per hour for more than 10 hours
82	Complex Transfer fee for projects proposing to save water by means of new water saving technology	\$2800 plus \$70 per hour for more than 40 hours
83	3rd Party Consulting or Ancillary Costs incurred to review transfer	Actual cost incurred by District
<i>Water Waste Fees (Rules 160 and 171)</i>		
84	Fee for each Flagrant Violation	\$50 per occurrence
85	Fee for subsequent violations within 18 months	\$150 per occurrence
<i>Well Monitoring Activity (Rule 52)</i>		
86	Registration of an Existing Well -- Non-Public Entities	\$10 per Registration
87	Registration of an Existing Well -- Public Entities	No Fee
88	Registration of a New Well – Non-Public Entities	No Fee
89	Registration of a New Well – Public Entities	No Fee
90	Well Registration Form	\$25 per Form

Table added by Ordinance No. 120 (3/21/2005); amended by Resolution No. 2005-06 (8/12/2005); Resolution 2007-02 (4/16/2007); Resolution 2007-06 (5/21/2007); Resolution 2010-09 (7/19/2010)



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**FREQUENTLY ASKED QUESTIONS AND RESPONSES ABOUT THE
CEASE & DESIST ORDER ISSUED BY THE
STATE WATER RESOURCES CONTROL BOARD**

Prepared May 20, 2010

Q1. Who prepared this document on the Cease and Desist Order (CDO) and what limits apply to its use?

A1. These Frequently Asked Questions (FAQ) and Responses have been prepared by the staff of the Monterey Peninsula Water Management District (MPWMD or District), at the direction of its Board of Directors, to help educate the public about the CDO issued by the State Water Resources Control Board (SWRCB) in October 2009. The information herein is the opinion of the MPWMD staff members who authored the various responses, based on staff's understanding of the facts as of the preparation date shown above. The answers are subject to change as new information arises. The CDO and related topics are technical and legal in nature, and readers should carefully review the disclaimer shown in Question #22.

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

A2. The CDO is SWRCB Order WR 2009-0060, issued in October 2009. The CDO is against California American Water (Cal-Am), which serves most of the water customers on the Monterey Peninsula. The CDO prescribes a series of significant cutbacks to Cal-Am's pumping from the Carmel River from 2010 through December 2016. Cal-Am customers may be subject to water rationing, a moratorium on Water Permits for new construction and remodels, and fines if pumping limits are exceeded. Ongoing lawsuits against the CDO will probably not be resolved until late 2010; thus, the specific long-term impacts of the CDO are unknown at this time. Specific groups of Cal-Am customers may not be affected, depending on the situation, as described in Questions #3 through #6 below.

Q3. How does the CDO affect Cal-Am customers in Pebble Beach or Sand City who have Water Entitlements from the District?

A3. The CDO does not cause a moratorium on new or intensified water connections for Cal-Am customers in Del Monte Forest or Sand City that are using an Entitlement of water from the

Pebble Beach Wastewater Reclamation Project or the Sand City Desalination Project. However, these customers will be subject to any rationing program that affects the Cal-Am water system.

Q4. How does the CDO affect Cal-Am customers along the Highway 68 corridor (Hidden Hills, Ryan Ranch and Bishop/Pasadera areas)?

A4. It is unclear what the effect of the CDO will be on Cal-Am's Hidden Hills, Ryan Ranch and Bishop water systems, which are operated independently from the main Cal-Am system. These systems do not receive direct supply from the Carmel River, but are indirectly linked to the Carmel River as a result of water use reductions specified for the Laguna Seca Subarea in the Seaside Groundwater Basin Adjudication Decision of the Monterey County Superior Court. The CDO does not affect people who are served by a water company owned by Cal-Am that derives its water supply from the Salinas area (east of Los Laureles Grade).

Q5. How will the CDO affect people who have their own wells or are served by a water company other than Cal-Am?

A5. The CDO does not affect people who use their own well, are served by a small mutual water system, or obtain water from a company other than Cal-Am. Seaside residents served by the Seaside Municipal Water Company would not be affected.

Q6. How will the CDO affect projects associated with the Fort Ord Reuse Plan?

A6. The CDO does not affect water customers of the Marina Coast Water District, the entity selected to serve redevelopment of the former Fort Ord.

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

A7. Though the CDO is directed against Cal-Am, MPWMD has been actively involved in the CDO because 95% of the people who live within MPWMD boundaries are Cal-Am customers. The MPWMD Board of Directors has consistently opposed the CDO due to technical flaws and the potential for adverse health and safety impacts to the community. MPWMD staff provided expert testimony in hearings on the draft CDO in Sacramento in 2008, and offered comments on earlier versions. When the final CDO was approved by the SWRCB in October 2009, MPWMD and Cal-Am filed suit. The lawsuits are awaiting consideration by the Court. The MPWMD successfully convinced the Monterey County Superior Court to suspend ("stay") implementation of the CDO from October 2009 through April 22, 2010, when a new judge reinstated the CDO. It is notable that the venue for the CDO proceedings was moved in January 2010 from Monterey to Santa Clara County at the request of the SWRCB.

Q8. What does the CDO actually say?

A8. The CDO includes the following major subjects: (1) a schedule for Cal-Am to reduce diversions from the Carmel River; (2) a ban on new and intensified water connections; (3) a requirement to build smaller near-term water supply projects; and (4) reporting procedures. The full text of the October 2009 CDO can be found on the District's website at:

http://www.swrcb.ca.gov/waterrights/board_decisions/adopted_orders/orders/2009/wro2009_006_0.pdf

Q9. Why does the CDO exist in the first place?

A9. The CDO may be viewed as an enforcement action. In July 1995, the SWRCB issued Order WR 95-10 against Cal-Am. The 1995 Order determined that roughly 70% of the water Cal-Am supplies to the community does not have a valid water right, and is therefore unlawful. The Order required Cal-Am to develop water supply sources in places other than the Carmel River. Cal-Am has not developed a substitute supply to date. The lack of a replacement supply was cited by the SWRCB as the reason the CDO was imposed. Notably, the proposed Regional Water Project currently before the California Public Utilities Commission (CPUC) is intended to enable Cal-Am to comply with both Order 95-10 and the CDO.

Q10. How long will the CDO last?

A10. The CDO is now in effect and will remain in effect at least until the lawsuits filed against the SWRCB by MPWMD, Cal-Am and other parties are resolved by the Court. The litigation timeline is uncertain, but the parties hope for resolution by the end of 2010. More information will be known after a Case Management Conference before the judge on June 14, 2010.

Q11. What water use reductions are required in the near-term?

A11. Water planners define a "Water Year" (WY) as October 1 through September 30. We are presently in WY 2010, which began on October 1, 2009, and ends on September 30, 2010. For WY 2010, the CDO sets a production limit (i.e., the amount of water Cal-Am can pump from the Carmel River) of 10,429 acre-feet per year (AFY¹). This amount is about 856 AF less than Cal-Am was allowed to pump from the river in WY 2009. This pumping limit does not change in WY 2011, but will be reduced by another 121 AF in WY 2012. Please refer to the CDO website link in Question #8; a chart showing these reductions is provided as [Attachment 1](#).

Q12. How do the Cal-Am pumping restrictions resulting from the Seaside Basin Adjudication add to the effects of the CDO?

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

A12. In addition to the pumping limits from the Carmel River noted in Question 11, the Court's Seaside Basin Adjudication Decision also calls for another 520 AFY reduction in Cal-Am pumping from its Seaside Basin wells in WY 2012. Further 10% reductions in Cal-Am pumping are specified every three years until the "natural safe yield" of the Seaside Basin is achieved. More information is available at the Seaside Basin Watermaster website at:
<http://www.seasidebasinwatermaster.org/>

Q13. Will I have to ration this year (WY 2010)? How about next year (WY 2011)?

A13. District staff is confident that mandatory rationing will not be needed in WY 2010 due to the combination of above-normal rainfall and below-normal economic activity, improvements in the Cal-Am system (such as leak reduction), higher water rates, extensive conservation education and outreach by MPWMD and Cal-Am, and replenishment of the Seaside Basin via the District and Cal-Am's partnership in the Aquifer Storage and Recovery (ASR) program. Community water use through April 30, 2010, (the first seven months of the water year) is well below the CDO limit. Unless there is unusually high water use this summer and early fall, compliance with the CDO limits in WY 2010 is expected under Stage 1 of the District's seven-stage *Expanded Water Conservation and Standby Rationing Plan*. The MPWMD is currently in Stage 1, which prohibits water waste and requires landscape water audits and water budgets for large outdoor water users. The full text of the MPWMD *Expanded Conservation and Standby Rationing Plan* is found on the District website at:

<http://www.mpwmd.dst.ca.us/wdd/Conservation/STAGE%201%20WATER%20CONSERVATION%20and%20water%20waste.htm>

Based on the production limits specified for Cal-Am in the CDO and in the Seaside Groundwater Basin Adjudication Decision, the District's rules require that Stage 5 water rationing be implemented. However, the District's rules also allow adherence to a lower, less restrictive conservation stage if it can be shown that water production limits can be achieved at that stage. In June 2010, the MPWMD General Manager plans to make a formal determination (including evidence) that Stage 5 rationing will not be needed for WY 2010, and that the current Stage 1 conservation program will suffice.

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

Q14. What would Stage 5 Water Rationing entail, if imposed?

A14. For single-family residential use, Stage 5 entails a specific ration of 70 gallons per day per person, regardless of the size of the home or landscaping. Multi-family residential users (apartment dwellers) would receive a ration of 45 gallons per day per person. Each residence should have already filled out a water survey form indicating the number of persons in the home. Commercial businesses, public uses and golf courses must also reduce their use to meet the reduction goals. Additional allowances of water may be available for medical needs and other specific purposes addressed in District Rule 169, which is shown on the District website at: (http://www.mpwmd.dst.ca.us/rules/2010/April/pdfs/RegXV/RegXV_rule169.pdf). Any variance will require the customer to meet specific conservation requirements first. Requests for variances will not be considered until Stage 5 Water Rationing has been officially declared.

Q15. How does the CDO affect the ability of MPWMD to issue Water Permits for new construction or remodels?

A15. The CDO is directed against Cal-Am. It is not directed against MPWMD or any other public agency, such as a city, and does affect the ability of MPWMD to issue Water Permits. District staff will continue to issue Water Permits pursuant to the MPWMD Rules & Regulations until directed otherwise by the MPWMD Board of Directors. However, the District is advising all applicants that Cal-Am was ordered by the SWRCB to not connect water meters to any new projects or remodels that intensify water use. This requirement presents a risk that an applicant may not be able to access Cal-Am water even if he or she has a valid District permit.

Q16. Will the District issue Water Permits despite the CDO limits?

A16. Unless or until the District Board of Directors amends the MPWMD Rules & Regulations, or declares a Water Permit moratorium, District staff will continue to issue Water Permits. To stay informed of potential Board action on these topics, please consult the District's website for Board meeting agenda information at (click on meeting date): <http://www.mpwmd.dst.ca.us/asd/board/boardpacket/2010/2010.htm>

Q17. What if I have a project in progress (i.e., I already submitted an application to MPWMD)?

A17. MPWMD staff will continue to process and issue Water Permits until directed otherwise. However, since the CDO is against Cal-Am, there is no guarantee that Cal-Am will act on a Water Permit. In addition, MPWMD may be required to report to Cal-Am information about properties that receive a Water Permits for remodels and other expansions in use, although it is unclear at this time what action might be taken.

Q18. What about remodel projects that will not result in increased water use due to water credits from retrofitted fixtures and other opportunities allowed by MPWMD Rules & Regulations?

A18. MPWMD staff will continue to process and issue Water Permits that utilize water credits until directed otherwise. Since the CDO is against Cal-Am, if the Water Permit includes a new water meter, there is no guarantee that Cal-Am will act on the Water Permit. In addition, MPWMD may be required to report to Cal-Am information about properties that receive a Water Permit for remodels and other expansions in use, although it is unclear at this time what action might be taken.

Q19. What water use reductions are required by the CDO in the long-term?

A19. Table 1 of the CDO requires "reductions in illegal diversions from the Carmel River" (see website link in Question #8). By WY 2016, a total of 9,318 AF of water diversions from the Carmel River would be allowed, which is about a 17% reduction (1,967 AF) as compared to the 11,285 AF annual Carmel River diversions that had been allowed until October 2009. By WY 2017, Cal-Am diversions may total only 3,376 AFY, which is its defined legal water right. This is a 70% (7,909 AF) reduction as compared to the 11,285 AFY allowed until late 2009. In addition, the Seaside Basin Adjudication also calls for a series of reductions from the Seaside Basin in this same time frame at a rate of a 10% reduction (520 AF) every three years until year 2021. Eventually, nearly all of Cal-Am's water supply for the Monterey Peninsula must be replaced with water from new sources, as shown in the graph provided as Attachment 2.

Q20. How will the community be able to meet those reductions without severe hardship?

A20. The reductions called for by the CDO combined with the Seaside Basin Adjudication would be catastrophic for the community without a major new water supply to replace these lost sources. MPWMD and Cal-Am are challenging the CDO because the health and safety of the community would be severely compromised, as would the local tourist-based economy.

Q21. What is MPWMD doing to reduce hardship to the community due to the CDO?

A21. MPWMD is actively involved in litigation to achieve a fair resolution to the CDO that does not penalize Monterey Peninsula consumers, as we already have one of the lowest water use rates in California. MPWMD and Cal-Am partner in a successful water conservation program that includes multiple water conservation incentives and water waste enforcement, education, new technology and an extensive rebate program.

MPWMD and Cal-Am are also successfully injecting record amounts of Carmel River water into the Seaside Groundwater Basin this year via two Aquifer Storage and Recovery (ASR) wells owned by the District, and are working together to drill more ASR wells to double the

production from the ASR program to more than 2,000 AFY. The ASR Project boosts Seaside Basin storage and results in lower Cal-Am extractions from the Carmel River in the dry season, which benefits people and the environment. Also, there has been significant forward progress on a regional water supply solution this past year. The CPUC is holding hearings in June 2010, which should lead to important approvals in late 2010. The District supports the Regional Project, but has challenged the proposed project financing and ratepayer representation. It is hoped that smaller near-term projects such as ASR combined with the long-term Regional Project will result in full compliance with the CDO by the December 2016 deadline (see chart with CDO text; website link in Question #8).

Q22. Are there limitations on how the public should use this document (disclaimer)?

A22. Yes. The MPWMD has used all reasonable efforts and resources to include accurate and up-to-date information about the topics referenced in this FAQ and Responses. The Responses offer general and summary statements regarding a complex and changing set of legal requirements. Because the topics discussed are technical and legal in nature, and the rules respecting their application are subject to continual modification, MPWMD cannot provide any warranty or representation as to the accuracy of these Responses, and assumes no liability or responsibility for any errors or omissions as to the content of these Responses. Specific facts and circumstances may create an exception to the general principles that are stated. Before any person relies on the assessments contained in these responses, they are encouraged to seek expert legal advice. The MPWMD shall bear no liability for the content of these Responses, or for the consequences of any actions taken on the basis of the information provided, unless that information is subsequently confirmed in writing, based upon an agreed statement of facts. These responses may provide links to other websites and access to content prepared by third parties. MPWMD is at no time responsible for third party content accessible through the District website, including opinions, advice and statements.

Q23. What other sources of information are available on this matter?

A22. More information on the CDO and related topics may be available from one or more of the following sources:

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

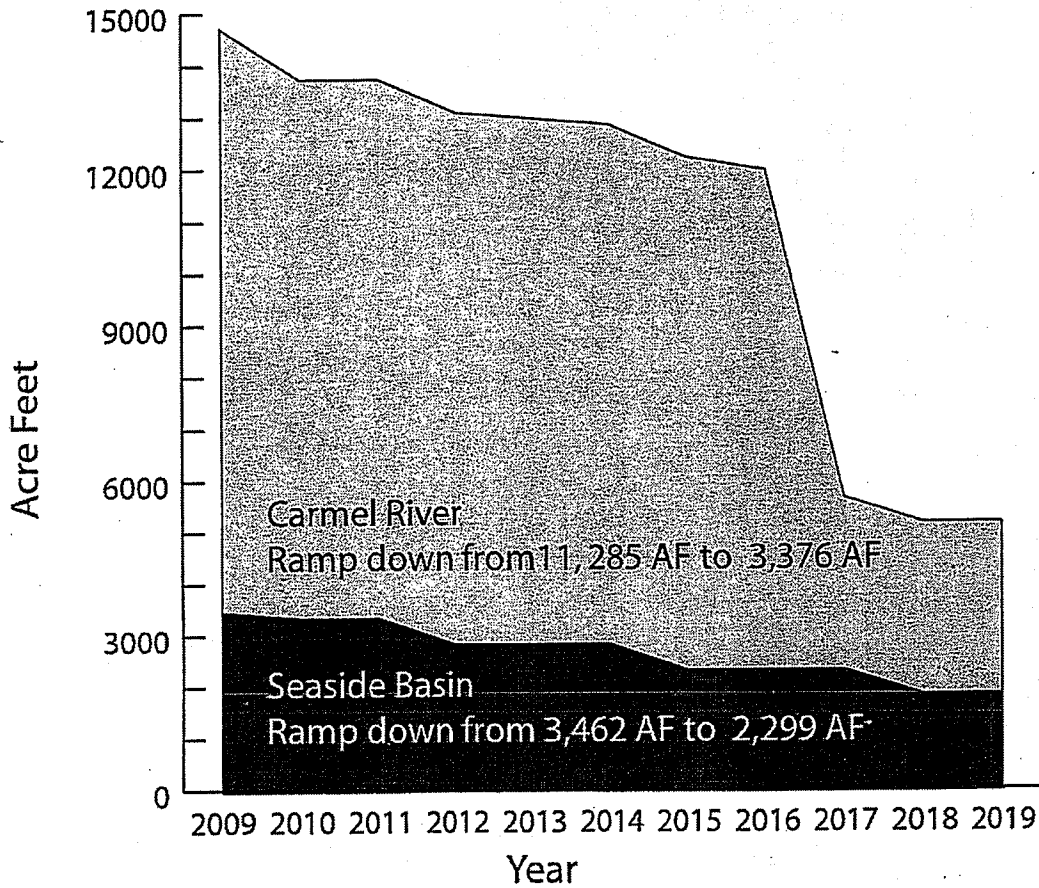
ATTACHMENT 1

**TABLE 1
PROJECTED REDUCTIONS IN ILLEGAL DIVERSIONS FROM THE CARMEL RIVER**
(all amounts are in acre-feet)

Water Year (Oct - Sept)	Base Amount ¹	Mandatory Cumulative Annual Reduction ²	Estimated ASR Project Operational Yield ³	Estimated Sand City Desalination Plant ⁴	Estimated Small Project Output ⁵	Estimated Coastal Water Project Output ⁶	Total to Base Amount	Total Estimated Diverted from Carmel River	Estimated Amount Diverted w/o Valid Basis of Right
2009-10	10,978	549	145	75	0	0	769	10,209	6,833
2010-11	10,978	549	145	290	0	0	984	9,994	6,618
2011-12	10,978	670	145	280	0	0	1,095	9,883	6,507
2012-13	10,978	791	145	270	0	0	1,206	9,772	6,396
2013-14	10,978	912	145	260	0	0	1,317	9,661	6,285
2014-15	10,978	1,033	145	250	0	0	1,428	9,550	6,174
2015-16	10,978	1,275	145	240	0	0	1,660	9,318	5,942
2016-17	10,978	1,517	145	230	0	11,730	1,892	3,376	0

- 1) Cal-Am diverts 3,376 afa under legal rights and, on average, 7,602 afa without a valid basis of right (60 afa of the 3,376 afa is assumed diverted under riparian right to riparian vegetation along Carmel River).
- 2) Reduction in 2009-2010 and 2010-2011 is initial amount of 5% (549 ac-ft). Starting October 1, 2011, add 121 at each year until October 1, 2016, when the annual reduction becomes 242 afa.
- 3) Average amount diverted for Phase 1 ASR project from water year 1984-1995 to 2006-2007 (R.T. Phase 1, Vol. I pp. 41-42). Amount may increase when Phase 2 of the ASR project becomes operational.
- 4) Number may vary based on actual production from desalination plant. Assumes 3 months of operation in 2009-10.
- 5) Production from small projects cannot be estimated at this time.
- 6) Estimated production of Coastal Water Project (R.T. Phase 2, Vol. V, p. 1333).

Mandated Reductions in Water Supply



The CDO requires reductions in Carmel River production from 11,285 AF in 2009 to 3,376 AF in 2017. Another court decision requires reductions in Seaside Basin production from 3,462 AF to 2,299 AF over the same time period. Without a new water supply, only 5,675 AF may be available for community use by 2017.