

**Arlene Tavani**

---

**From:** Luke Coletti <ljc@groknet.net>  
**Sent:** Wednesday, January 27, 2016 1:14 PM  
**To:** Lewis4water@gmail.com; wthayer@thayerconstruction.com; water@mollyevans.org; jcbarchfaia@att.net; sandcitymyr@aol.com; district5@co.monterey.ca.us; rbrower136@gmail.com; Dave Stoldt; David Laredo; Arlene Tavani  
**Cc:** ddadamo@waterboards.ca.gov; felicia.marcus@waterboards.ca.gov; frances.spivy-weber@waterboards.ca.gov; smoore@waterboards.ca.gov; tdoduc@waterboards.ca.gov; thoward@waterboards.ca.gov; Barbara.Evoy@waterboards.ca.gov; Darrin.Polhemus@waterboards.ca.gov; O'Hagan, John@Waterboards; Marianna.Aue@waterboards.ca.gov; robert.maclean@amwater.com; Eric.Sabolsice@amwater.com; Richard.Svindland@amwater.com; larrysilver@earthlink.net; Brian LeNeve; O'Neill, Brian@Coastal  
**Subject:** Jan 27, 2016 MPWMD Board Meeting, Item13 - CONSIDER SECOND READING AND ADOPTION OF ORDINANCE NO. 168 -- AMENDING RULE 11, AND ADDING RULE 23.9 TO ESTABLISH A WATER ENTITLEMENT FOR THE CITY OF PACIFIC GROVE  
**Attachments:** rs2015\_0070.pdf

MPWMD Board Members,

SWRCB Resolution 2015-0070:

At their Nov 17, 2015 meeting the SWRCB implemented a condition to the funding of the Pacific Grove Local Water project that affirms both Section 19.2 and Condition 2 of the Cal-Am Cease and Desist Order WRO 2009-0060 (see Whereas 12 and Condition 4b in SWRCB Resolution 2015-0070 - attached PDF).

Whereas 12 reads as follows: Section 19.2 of State Water Board Order WR 2009-0060 states that cities on the Monterey Peninsula that receive water from Cal-Am must first apply any new water developed to offsetting diversions from the Carmel River prior to using the water for growth.

Condition 4b reads as follows: The City shall apply recycled water produced by the Project to service of existing uses and shall use the ensuing demand reductions to offset deliveries from Cal-Am until such time as the City receives consent from the State Water Board's Executive Director to apply the Project's recycled water and associated demand reductions to new service connections or to increased use at existing service addresses resulting from a change in zoning or use.

It appears to me that MPWMD staff doesn't believe this condition applies to the District. Also, there is absolutely no mention of 2015-0070 Condition 4b in the proposed text for MPWMD Ordinance 168. Instead, the District appears to be "thumping their nose" at the SWRCB by omitting Condition 4b from MPWMD Ordinance 168 and also by gifting yourself an entitlement of 9 afy that apparently can be allocated/used without complying with SWRCB desires, detailed in SWRCB Res. 2015-0070. Agenda reports for both the first and second readings of MPWMD Ordinance 168 are provided below:

<http://www.mpwmd.dst.ca.us/asd/board/boardpacket/2015/20151214/19/Item19.htm>

<http://mpwmd.dst.ca.us/asd/board/boardpacket/2016/20160127/13/Item-13.htm>

## CEQA:

In the Jan 17 agenda report MPWMD staff has added additional instructions that mention the "The District Board action must comply with CEQA". However, the Supplemental EIR for the Pacific Grove Local Water Project (that claims to have examined the environmental impacts of re-using the "saved" potable water freed up by the project) did not in fact analyze any of the impacts of re-using the portion of water that the district is gifting itself. I provide below my SEIR comment (E7) and the City's response (found on SEIR p. 2-35 - link below):

Coletti SEIR Comment E7: "Page S-1 states the SDEIR does not analyze potential environmental effects from the 35 AFY of water retained by MPWMD as it is not part of the City entitlement. While it is not part of the City entitlement, there are effects on the environment from gifting MPWMD water and those impacts are also a result of the project. The Final EIR must evaluate those cumulative impacts".

City Response: "Comment noted. However, any analysis of the potential impacts from use of the 35 AFY by the MPWMD would be highly speculative and therefore not required under CEQA Section 15145. In addition, use of entitlements by MPWMD would require subsequent analysis for their approval at the time any such use of all or a portion of the 35 AFY was contemplated".

<http://www.cityofpacificgrove.org/sites/default/files/general-documents/local-water-project/final-seir20150909compress.pdf>

Why are the potential environmental effects and impacts of the MPWMD entitlement (re-use) any more speculative than Pacific Grove's entitlement (re-use)? Citing CEQA Section 15145 (link below) seems like an extremely capricious means of dodging the impacts of the MPWMD entitlement. Therefore, I am formally requesting that the board make specific findings regarding how and why it is not necessary to evaluate the potential environmental impacts of the 9 afy entitlement you are gifting yourself.

<http://www.pclfoundation.org/publications/ceqaguidelines/Article-10.html#sec15145>

Finally, let me state that I believe any entitlement post WRO 95-10 and certainly post WRO 2009-0060 is, at best, problematic. I oppose the inclusion of any past use of unlawful water (diverted by Cal-Am) for the purpose of determining a MPWMD "entitlement". Is anyone really "entitled" to profit from something that was taken/used unlawfully? I certainly don't believe so. Also, how will carrying these entitlements into the future provide the much proclaimed conservation benefits (water and energy) that this state funded project was specifically meant to provide? I intend to advocate this position as part of the upcoming Cal-Am CDO extension hearings at the SWRCB, where the question of MPWMD entitlements (especially this one) will surely be discussed.

[http://www.waterboards.ca.gov/waterrights/water\\_issues/projects/california\\_american\\_water\\_company/index.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/projects/california_american_water_company/index.shtml)

Please include this e-mail \*and\* the attached PDF into the public record.

Thank you for your consideration,

Luke Coletti  
Pacific Grove

**STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 2015-0070**

**APPROVING WATER RECYCLING FUNDING PROGRAM (WRFP) AND CLEAN WATER  
STATE REVOLVING FUND (CWSRF) FINANCING FOR THE CITY OF PACIFIC GROVE  
LOCAL WATER PROJECT (PROJECT)**

**WHEREAS:**

1. The State Water Resources Control Board (State Water Board), on February 17, 2015, amended the "*Policy for Implementing the Clean Water State Revolving Fund*" (Policy);
2. The City of Pacific Grove (City) applied for a CWSRF Loan and WRFP Grant for a total of \$7.7 million for the construction of a new satellite recycled water treatment plant;
3. The Project is listed on the Project List;
4. The City of Pacific Grove (City) is the lead agency under the California Environmental Quality Act (CEQA), and has prepared an Environmental Impact Report (EIR) for the Project;
5. Adequate public participation was provided through the CEQA review process. The EIR was circulated through the State Clearinghouse (SCH) (No. 2014021058) from September 16, 2014 through October 30, 2014 for public review and commenting;
6. The City certified the EIR, adopted a Mitigation Monitoring and Reporting Program (MMRP), and approved the Project on November 19, 2014;
7. The City filed a Notice of Determination (NOD) for the EIR with the Monterey County Clerk and Governor's Office of Planning and Research (OPR) on November 20, 2014 and November 24, 2014, respectively;
8. The City prepared a Supplemental EIR for the Project and distributed it to the public and circulated it through SCH for review from July 8, 2015 through August 6, 2015;
9. The City adopted the Supplemental EIR and approved the project on October 7, 2015 and filed an NOD with the Monterey County Clerk and OPR on October 8, 2015 and October 9, 2015, respectively;
10. State Water Board initiated consultation with the State Historic Preservation Officer (SHPO) on February 4, 2015. On March 11, 2015, the SHPO responded with a conditional concurrence. SHPO concurred with a finding of "No Adverse Effects to Historic Properties" with the condition that a qualified archaeological monitor and a Native American monitor be present for all ground-disturbing activities in the Project area;
11. The City's environmental documents provided an adequate disclosure of the environmental relationships of all water quality aspects of the Project. Mitigation measures and design measures incorporated into the Project will avoid or substantially reduce other potentially significant environmental impacts. The Project will not result in any significant adverse water quality impacts; and

12. Section 19.2 of State Water Board Order WR 2009-0060 states that cities on the Monterey Peninsula that receive water from Cal-Am must first apply any new water developed to offsetting diversions from the Carmel River prior to using the water for growth.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves up to \$5,285,000 CWSRF construction financing and \$2,415,000 for Prop 13 Water Recycling Funding Program grant for the City's Project.
2. Condition this approval, as determined by the environmental review, with the following:
  - a. The City shall comply with the applicable mitigation measures of the November 2014 MMRP;
  - b. Per the March 11, 2015 concurrence letter from Carol Roland-Nawi of the SHPO to Madeleine Flandreau of the State Water Board, the City shall ensure that qualified archeological and Native American monitors are present during all earth-moving and ground disturbing activities in the Project area;
  - c. The City shall obtain a Coastal Development Permit from the California Coastal Commission, submit a copy to the State Water Board and comply with all required measures therein;
3. Condition this approval, as determined by the City's credit review, with the following:
  - a. The City shall pledge revenues of the Sewer Enterprise Fund for repayment of the proposed CWSRF financing agreement. This pledged revenue fund (source) shall be subject to lien and pledge as security for the Obligation;
  - b. The proposed financing agreement shall be issued on parity with the Capital One Public Funding LLC Wastewater Loan Agreement dated April 1, 2013. Parity debt requires debt service coverage of 1.20 times the total annual debt service;
  - c. The City shall establish rates and charges sufficient to generate net revenues of the Sewer Enterprise Fund equal to at least 1.20 times the total annual debt service;
  - d. The City shall establish a restricted reserve fund, held in the Sewer Enterprise Fund, equal to one year's debt service prior to the construction completion date of the project. The restricted reserve fund shall be maintained for the full term of the Finance Agreement and shall be subject to lien and pledge as security for the Obligation; and
  - e. The City shall submit a revised Pledged Revenue Fund/Source Resolution pledging the Net Revenues of the Sewer Enterprise Fund and the Sewer Enterprise Fund prior to a financing agreement being executed.

4. Condition this approval, as determined by the City's technical review, with the following:

a. The City must submit a Waste Discharge Permit approved by the Central Coastal Regional Water Quality Control Board with the Final Budget Approval package. The financing agreement will not be finalized and no funds will be disbursed for construction until the adopted Waste Discharge Permit is submitted to the Division of Financial Assistance.

b. The City shall apply recycled water produced by the Project to service of existing uses and shall use the ensuing demand reductions to offset deliveries from Cal-Am until such time as the City receives consent from the State Water Board's Executive Director to apply the Project's recycled water and associated demand reductions to new service connections or to increased use at existing service addresses resulting from a change in zoning or use.

**CERTIFICATION**


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 17, 2015.

AYE: Chair Felicia Marcus  
Vice Chair Frances Spivy-Weber  
Board Member Tam M. Doduc  
Board Member Steven Moore  
Board Member Dorene D'Adamo

NAY: None

ABSENT: None

ABSTAIN: None

  
\_\_\_\_\_  
Jeanine Townsend  
Clerk to the Board