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Dennis C. Beougher  
Patrick S.M. Casey  
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Hollister, CA 95023  
831-630-9444  
831-630-5935 (FAX)

File No. 00458.004

November 19, 2009

**VIA E-MAIL & U.S. MAIL**

Mr. Paul Murphy  
Hearings Unit, Division of Water Rights  
State Water Resources Control Board  
Cal/EPA Headquarters  
1001 I Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814-2828

Re: **Petition for Reconsideration – SWRCB Order WR 2009-0060**

Dear Mr. Murphy:

On behalf of our client, Baylaurel, LLC, we submit the enclosed Petition for Reconsideration of SWRCB Order WR 2009-0060. As noted on the Proof of Service that is attached to the Petition, our office has served copies of the Petition to all of the “interested parties” listed on the “California American Water Cease and Desist Order Service List.”

Respectfully submitted,

**Lombardo & Gilles, LLP**

A handwritten signature in black ink, appearing to be "JSR", written over a horizontal line.

Jason S. Retterer

JSR:ncs

Enclosures

1 ANTHONY L. LOMBARDO, Esq. #104650  
JASON S. RETTERER, Esq. #194651  
2 LOMBARDO & GILLES, LLP  
318 Cayuga Street  
3 Salinas, California 93901  
Telephone: 831.754.2444  
4 Facsimile: 831.754.2011  
5 Attorneys for Petitioner, Baylaurel LLC

6 STATE OF CALIFORNIA

7  
8 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

9 IN THE MATTER OF CALIFORNIA  
10 AMERICAN WATER COMPANY  
11 CEASE & DESIST ORDER WR 2009-  
0060

Petition For Reconsideration

12  
13 I. Introduction

14 Petitioner, Baylaurel LLC ("Baylaurel") owns and operates Bernardus Lodge, located  
15 at 5 West Carmel Valley Road, in Carmel Valley, California. Bernardus Lodge is located in  
16 unincorporated Monterey County and is within the jurisdictional boundaries of the Monterey  
17 Peninsula Water Management District ("MPWMD"). Bernardus Lodge is currently receiving  
18 water from the California-American Water Company ("Cal-Am").

19 Baylaurel respectfully petitions the State Water Resources Control Board ("SWRCB") for  
20 reconsideration of Order WR 2009-0060 ("Order"), which was adopted on October 20, 2009.  
21 The Order requires Cal-Am to cease and desist from the unauthorized diversion of water from the  
22 Carmel River in accordance with the schedule and conditions set forth in the Order. Baylaurel  
23 requests that SWRCB reconsider the Order, specifically Condition No. 2 of the Order, which, as  
24 drafted, will effectively extinguish Baylaurel's previously approved and vested water  
25 entitlements.

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## II. Background

When Bernardus Lodge was approved for development, the resort included an on-site laundry facility. In 2008, Baylaurel permanently removed the on-site laundry from the property and recorded a Deed Restriction, which forever prohibits a laundry facility at Bernardus Lodge. *Exhibit A*. In exchange for removal of the on-site water facility and in accordance with MPWMD Rule 25.5,<sup>1</sup> MPWMD approved a water credit of 3.740 AFA. *Exhibit B*. When Baylaurel made the decision to dismantle the laundry facility and record the Deed Restriction, it reasonably expected that the resulting water credit would be available for future use on the property.

## III. Grounds for Reconsideration

### A. The Order Improperly Deprives Baylaurel of Its Vested Water Entitlement

The Order commands Cal-Am to cease and desist from the unlawful diversion of water from the Carmel River in accordance with a water reduction schedule and numerous conditions. Among other conditions, Condition No. 2 states:

Cal-Am shall not divert water from the Carmel River for new service connections or for any increased use of water at existing service addresses resulting from a change in zoning or use. Cal Am may supply water from the river for new service connections or for any increased use at existing service addresses resulting from a change in zoning or use after October 20, 2009 provided that any such service had obtained all necessary written approvals required for project construction and connection to Cal-Am's water system prior to that date.

The Order is inappropriate, improper and illegal because it prevents Baylaurel and other property owners who have obtained vested water entitlements from MPWMD in the

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<sup>1</sup> Rule 25.5 establishes rules and regulations that govern the issuance of water credits. Among other sections, subsection (a) provides that: "Except where a Water Permit has been abandoned, expired, Revoked, suspended, or canceled under these Rules, a Person may receive a Water Use Credit for the permanent abandonment of some or all of the prior water use on that Site by one of the methods set forth in this Rule. Water Use Credits shall be documented by written correspondence between the District and the property owner, and shall remain valid unless prohibited by this Rule. Water Use Credits shall not be documented by notice on a property title, except as specified in Rule 25.5-G. Except as allowed by Rule 28, Water Use Credits shall not be transferable to any other Site.

1 form of water credits, from obtaining new service connections from Cal-Am. Baylaurel, like  
2 other property owners within Cal-Am's service area, has performed substantial work and  
3 incurred substantial liabilities in good faith reliance on the rules and regulations of MPWMD  
4 and representations from MPWMD staff to establish water credits for future use. Baylaurel  
5 voluntarily abandoned the convenience of an on-site laundry facility to ensure that sufficient  
6 water supplies would be available to meet future facilities needs of Bernardus Lodge.

7 This water entitlement is documented and memorialized in the "Notice of Deed  
8 Restriction Regarding Limitation of Use of Water on Property" that was recorded on the property  
9 pursuant to MPWMD Rule 25.5 (G)(2)<sup>2</sup>. The Deed Restriction was executed by Baylaurel and  
10 MPWMD and sets forth the rights and obligations of the parties as to the approved water  
11 entitlement. The Order's prohibition on new service connections improperly deprives Baylaurel  
12 of this contractual vested water right.

13 **B. The Order Fails to Properly Balance the Interests of the Community**

14 The SWRCB has an obligation to balance the various interests of the community when  
15 determining the most appropriate means to protect the public trust. *National Audubon Society v.*  
16 *Superior Court of Alpine County* (1983) 33 Cal.3d 419, 447. These interests necessarily must  
17 include Bernardus Lodge and the Monterey Peninsula hospitality industry in general, which is a  
18 vital component of the local economy and is presently suffering from ongoing economic decline.  
19 In this case, the Order's prohibition of new service connections demonstrates that there was no  
20 balancing of the interests or any consideration whatsoever of the economic consequences of the  
21 Order on Baylaurel and the hospitality industry of the Monterey Peninsula. This failure to  
22 balance occurred notwithstanding evidence in the record regarding the adverse consequences of  
23 the Order on the Monterey Peninsula hospitality industry. *Exhibit C.*

24 The SWRCB's failure to conduct the required balancing will severely and unjustly affect  
25 the long term viability of Carmel Valley Ranch and other property owners who have acted

26 \_\_\_\_\_  
27 <sup>2</sup> Rule 25.5(G)(2) provides: "Use of a documented water credit to offset an expansion of use shall cause  
28 recordation of a Notice and Deed Restriction regarding limitation on use of water on property."

1 responsibly and within the parameter of the law. While the SWRCB appears to have undertaken  
2 this type of balancing to exclude the Pebble Beach Company (“PBC”) water entitlement from the  
3 new connection prohibition, the Order inexplicably fails to extend the same type of balancing to  
4 other parties who have obtained similar water entitlements. This balancing should apply with  
5 equal vigor to Baylaurel and other property owners who have acted responsibly and in reliance on  
6 the assurances provided by local rules and regulations and the regulators.

7 **C. The Order’s Recognition of Some Water Credits, But Not Others, Is Arbitrary and**  
8 **Capricious**

9 The Order properly recognizes the PBC’s 365 AFA water entitlement based on its  
10 significant investment in the wastewater reclamation project, which reduced its overall demand  
11 on Cal-Am or Carmel River water. By recognizing PBC’s entitlement, the Order implicitly  
12 found that such an exemption would not have an adverse impact on fish, wildlife, and the  
13 riparian habitat of the Carmel River. The same rationale should be applied to other property  
14 owners that have made significant investments to reduce their demand on Cal-Am water in  
15 exchange for MPWWD’s approval a water entitlement for the property. Like the efforts  
16 undertaken by PBC, Baylaurel implemented measures to reduce its overall water demand in  
17 order to secure water credits for future use on the property. Any future use of this previously  
18 approved water credit, which is based on water historically consumed on the property, would  
19 not result in any increase in illegal diversions of the Carmel River. The Order’s unique  
20 treatment of the PBC entitlement and its failure to recognize and exempt the water credits  
21 obtained by Baylaurel and other property owners is arbitrary and capricious and an abuse of  
22 discretion.

23 **IV. Conclusion**

24 Baylaurel, in good-faith reliance on MPWMD rules and regulations authorizing water  
25 credits, made significant investments in water conservation measures to obtain the water credit  
26 that is presently available to serve the property. The Order’s ban on new service connections  
27 improperly and unlawfully deprives Baylaurel of this vested water entitlement. Accordingly,  
28

1 Baylaurel respectfully requests that the SWRCB conduct the required balancing of interests  
2 required under *National Audubon Society* and reconsider and modify the Order to exempt new  
3 connections or intensification of water use that are based on MPWMD-approved water credits  
4 from the new connection prohibition set forth in Condition No. 2 of the Order.

5 Dated: November 19, 2009

**LOMBARDO & GILLES, LLP**

6  
7 By: 

Jason S. Retterer

Attorney for Baylaurel LLC

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1 **PROOF OF SERVICE**

2 I am employed in the County of Monterey, State of California. I am over the age of eighteen  
3 years and not a party to the within action. My business address is 318 Cayuga Street, Salinas,  
California 93901.

4 On the date set forth below, I caused the following document(s) entitled:

5 **PETITION FOR RECONSIDERATION**

6 to be served on the party(ies) or its (their) attorney(s) of record in this action listed below by the  
7 following means:

X	<b>BY MAIL.</b> By placing each envelope (with postage affixed thereto) in the U.S. Mail at the law offices of Lombardo & Gilles, 318 Cayuga Street, Salinas, California , addressed to City of Carmel-by-the-Sea; Donald G. Freeman; P. O. Box CC; Carmel-by-the-Sea, CA 93921. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and in the ordinary course of business, correspondence would be deposited with the U.S. Postal Service the same day it was placed for collection and processing.
	<b>BY HAND-DELIVERY.</b> By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.
	<b>BY OVERNIGHT DELIVERY.</b> By placing with an overnight mail company for delivery a true copy thereof, enclosed in a sealed envelope, with delivery charges to be billed to Lombardo & Gilles, addressed as shown below.
	<b>BY FACSIMILE TRANSMISSION.</b> By transmitting a true copy thereof by facsimile transmission from facsimile number (831) 754-2011 to the interested party(ies) or their attorney(s) of record to said action at the facsimile number(s) shown below.
X	<b>BY ELECTRONIC MAIL.</b> By transmitting a true copy thereof by electronic mail from e-mail address nancy@lomgil.com to Mr. Paul Murphey at the State Water Resources Control Board and to the interested parties or their attorney(s) of record to said action at the electronic mail addresses shown in the attached list.

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20 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
21 true and correct.

22 Executed on November 19, 2009, at Salinas, California.

23   
24 Nancy Stafford

CALIFORNIA AMERICAN WATER CEASE AND DESIST ORDER  
SERVICE LIST

**Service by Electronic Mail**

California American Water  
Jon D. Rubin  
Diepenbrock Harrison  
400 Capitol Mall, Suite 1800  
Sacramento, CA 95814  
(916) 492-5000  
[jrubin@diepenbrock.com](mailto:jrubin@diepenbrock.com)

State Water Resources Control Board  
Reed Sato  
Water Rights Prosecution Team  
1001 I Street  
Sacramento, CA 95814  
(916) 341-5889  
[rsato@waterboards.ca.gov](mailto:rsato@waterboards.ca.gov)

Public Trust Alliance  
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Resource Renewal Institute  
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San Francisco, CA 94123  
[Michael@rri.org](mailto:Michael@rri.org)

Sierra Club – Ventana Chapter  
Laurens Silver  
California Environmental Law Project  
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[jwill@dcn.davis.ca.us](mailto:jwill@dcn.davis.ca.us)

Carmel River Steelhead Association  
Michael B. Jackson  
P.O. Box 207  
Quincy, CA 95971  
(530) 283-1007  
[mjatty@sbcglobal.net](mailto:mjatty@sbcglobal.net)

Calif. Sportfishing Protection Alliance  
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[mjatty@sbcglobal.net](mailto:mjatty@sbcglobal.net)

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Santa Barbara, CA 93101  
(805) 963-7000  
[RMcGlothlin@BHFS.com](mailto:RMcGlothlin@BHFS.com)

The Seaside Basin Watermaster  
Russell M. McGlothlin  
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21 East Carrillo Street  
Santa Barbara, CA 93101  
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[RMcGlothlin@BHFS.com](mailto:RMcGlothlin@BHFS.com)

Monterey Peninsula Water

City of Sand City



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David C. Laredo  
606 Forest Avenue  
Pacific Grove, CA 93950  
(831) 646-1502  
[dave@laredolaw.net](mailto:dave@laredolaw.net)

James G. Heisinger, Jr.  
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Fenton & Keller  
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Monterey, CA 93942-0791  
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[TJamison@FentonKeller.com](mailto:TJamison@FentonKeller.com)

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Colton Hall  
Monterey, CA 93940  
(831) 646-3886  
[meurer@ci.monterey.ca.us](mailto:meurer@ci.monterey.ca.us)

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Carmel, CA 93922  
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[bobmac@qwest.net](mailto:bobmac@qwest.net)

California Salmon and Steelhead  
Association  
Bob Baiocchi  
P.O. Box 1790  
Graeagle, CA 96103  
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[rbaiocchi@gotsky.com](mailto:rbaiocchi@gotsky.com)

Planning and Conservation League  
Jonas Minton  
1107 9<sup>th</sup> Street, Suite 360  
Sacramento, CA 95814  
(916) 719-4049  
[jminton@pcl.org](mailto:jminton@pcl.org)

National Marine Fisheries Service  
Christopher Keifer  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
(562) 950-4076  
[christopher.keifer@noaa.gov](mailto:christopher.keifer@noaa.gov)

Division of Ratepayer Advocates  
Max Gomberg, Lead Analyst  
505 Van Ness Avenue  
San Francisco, CA 94102  
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[eau@cpuc.ca.gov](mailto:eau@cpuc.ca.gov)

City of Seaside  
c/o Rick Medina  
440 Harcourt Avenue  
Seaside, CA 93955  
(831) 899-6726  
[rmedina@ci.seaside.ca.us](mailto:rmedina@ci.seaside.ca.us)

Pebble Beach Company  
Kevin O'Brien  
Downy Brand LLP  
621 Capitol Mall, 18<sup>th</sup> Floor  
Sacramento, CA 95814  
(916) 444-1000  
[kobrien@downeybrand.com](mailto:kobrien@downeybrand.com)

Carmel River Steelhead Association  
Brian Leneve  
P.O. Box 1021  
Carmel, CA 93921  
(831) 624-8497  
[bjleneve@att.net](mailto:bjleneve@att.net)

**Service by Mail**

City of Carmel-by-the-Sea  
Donald G. Freeman  
P.O. Box CC  
Carmel-by-the-Sea, CA 93921  
(831) 624-5339 ext. 11



**MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT**

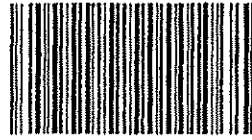
5 HARRIS COURT, BLDG. G  
POST OFFICE BOX 85  
MONTEREY, CA 93942-0085 • (831) 658-5601  
FAX (831) 644-9560 • <http://www.mpwmd.dst.ca.us>

Stephen L. Vagnini  
Monterey County Recorder  
Recorded at the request of  
**Filer**

CRLUCY  
6/30/2008  
11:54:00

DOCUMENT: **2008042295**

Titles: 1/ Pages: 4



Fees.... 18.00  
Taxes...  
Other... 2.00  
AMT PAID \$20.00

**Recording Requested by:**  
Monterey Peninsula Water Management District

**And When Recorded Mail To:**  
Monterey Peninsula Water Management District  
Post Office Box 85  
Monterey, California 93942-0085

**NOTICE AND DEED RESTRICTION  
REGARDING LIMITATION ON USE  
OF WATER ON A PROPERTY**

**NOTICE IS GIVEN** that the Monterey Peninsula Water Management District (hereinafter referred to as the Water Management District), duly formed as a water district and public entity pursuant to the provisions of law found at Statutes of 1977, Chapter 527, as amended (found at West's California Water Code Appendix, Chapters 118-1 to 118-901), has approved water service to the real property referenced below as "Subject Property".

**NOTICE IS FURTHER GIVEN** that the real property affected by this agreement is situated in the County of Monterey:

**415 W. CARMEL VALLEY RD, CARMEL VALLEY CA 93924  
(VOL 24 SUR MAPS PG 57 25 345 AC)  
ASSESSOR'S PARCEL NUMBER 187-131-044-000**

This real property is hereinafter referred to as the "Subject Property." The Subject Property is located within the jurisdiction of the Water Management District. **Baylaurel, LLC, a California Limited Liability Company**, (hereinafter referred to as "Owner(s)"), are record Owner(s) of the Subject Property.

Owner(s) and the Water Management District each acknowledge and agree that **all laundry facilities** on the Subject Property shall be permanently abandoned. At no time may water supplied by California American Water be used for any **laundry facilities** on the Subject Property without prior authorization from the governing Jurisdiction and a Water Permit authorizing such use issued by the Water Management District.

**NOTICE IS FURTHER GIVEN** if at any time, the Water Management District finds upon inspection of the property, or that laundry facilities are being used on Subject Property, or if at any time access to inspect the property is denied, an immediate debit to the Jurisdiction's Allocation shall occur in the amount of the water demand associated with the use, and a lien shall be placed against the property for full payment of all Connection Charges and/or other charges to service this water use.

**NOTICE IS FURTHER GIVEN** that this agreement is binding and has been voluntarily entered into by Owner(s), and each of them, and constitutes a mandatory condition precedent to receipt of regulatory approval from the Water Management District relating to the Subject Property and **approval of this Water Use Credit**. This agreement attaches to the land and shall bind any tenant, successor or assignee of Owner(s).

**NOTICE IS FURTHER GIVEN** that present and/or future use of water at the Subject Property site is restricted by Water Management District Rules and Regulations to the water use requirements referenced above. Any modification to a water use connection as set forth in District Rule 20-B will require prior written authorization and Permit from the Water Management District. Approval may be withheld by the Water Management District, in accord with then applicable provisions of law. Present or future Allocations of water may not be available to grant any Permit to Intensify Water Use at this site. If any request to Intensify Water Use on the Subject Property is approved, Connection Charges and other administrative fees may be required as a condition of approval.

**NOTICE IS FURTHER GIVEN** that modification or Intensification of Water Use on the Subject Property that occurs without the advance written approval of the Water Management District is a violation of Water Management District Rules and may result in a monetary penalty for each offense as allowed by Water Management District Rules. Each separate day, or portion thereof, during which any violation occurs or continues without a good faith effort by the Responsible Party to correct the violation shall be deemed to constitute a separate offense. All Water Users within the jurisdiction of the Water Management District are subject to the Water Management District Rules, including Rules 11, 20, 21, 23, 24, and 148.

The Owner(s) and the Water Management District each intend that this Notice and Deed Restriction act as a deed restriction upon the Subject Property, and that it shall be irrevocable under its terms. This document shall be enforceable by the Water Management District or any public entity that is a successor to the Water Management District.

The Owner(s) elects and irrevocably covenants with the District to abide by this Notice and Deed Restriction. But for the limitations and notices set forth herein, **approval of this Water Use Credit** would otherwise be withheld and found to be inconsistent with the Water Management District Rules and Regulations.

This Notice and Deed Restriction is placed upon the Subject Property. Any transfer of this property, or an interest therein, is subject to this deed restriction. This Notice and Deed Restriction shall have no termination date unless amended by the filing of a less restrictive deed restriction.

If any provision of this Notice and Deed Restriction is held to be invalid, or for any reason becomes unenforceable, no other provision shall thereby be affected or impaired.

The undersigned Owner(s) agrees with and accepts all terms of this document stated above, and requests and consents to recordation of this Notice and Deed Restriction Regarding Limitation on Use of Water on a Property. The Owner(s) further agrees to notify any present and future tenant of the Subject Property of the terms and conditions of this document.


OWNER(S) agrees to recordation this Notice and Deed Restriction in the Recorder's Office for the County of Monterey. Owner(s) further unconditionally accepts the terms and conditions stated above.

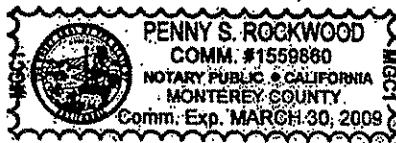
(Signatures must be notarized).

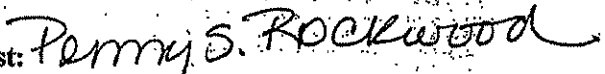
Baylaurel, LLC, a California Limited Liability Company

MANAGER:

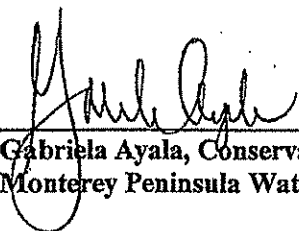
Baylaurel Corporation,  
a California Corporation

By:  Dated: 4/15/08  
Carole A. Forest, President



Attest: 

By:   
Carole A. Forest, Secretary

By:  Dated: 6-24-08  
Gabriela Ayala, Conservation Representative  
Monterey Peninsula Water Management District

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

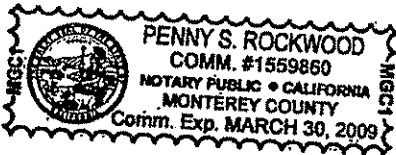
County of Monterey

On June 24, 2008 before me, Penny S. Rockwood, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Carole A. Forest  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature Penny S. Rockwood  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Notice and Deed Restriction Regarding Limitations on Use of Water on a Property  
Document Date: April 15, 2008 Number of Pages: 3

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Carole A. Forest

- Individual
- Corporate Officer — Title(s): Secretary
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER  
Top of thumb here

Signer Is Representing: Raylaurel LLC

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER  
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Signer Is Representing: \_\_\_\_\_

**END OF DOCUMENT**

EXHIBIT K

MPWMD WATER RELEASE  
FORM

# EXHIBIT K

## MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

### COMMERCIAL WATER RELEASE FORM AND WATER PERMIT APPLICATION

NOTE: When approved and signed, this form must be submitted with final and complete construction plans, to the Monterey Peninsula Water Management District permit office (831-658-5801), 5 Harris Court, Bldg. G, Monterey. Completing the Water Release Form & Permit Application does not guarantee issuance of a water permit.

ALL SPACES BELOW MUST BE COMPLETED OR THE APPLICATION MAY NOT BE PROCESSED. (Please print firmly).

Property Owner: Bay Laurel LLC Agent/Representative: Lombardo & Siler  
 Name of Business: Berhardus Lodge Mailing Address: 318 Cayuga St  
 Business Owner: Bay Laurel LLC Salinas, CA  
 Owner's Phone: 754-2444 Agent's Phone: 754-2444  
 Property Address: 415 Carmel Valley Rd Assessor's Parcel Number: 187-131-044  
Carmel, CA Is a Water Meter Needed? NO If yes, how many? \_\_\_\_\_

(District law requires each water user to have separate water meters)

Water Company Serving Property: CAL-AM

All properties that modify or add water fixtures on a property within the Monterey Peninsula Water Management District must obtain written authorization from the District prior to taking action. Commercial users that increase square-footage or change uses, as illustrated below, are also required to obtain a water permit. Low water use plumbing fixtures will be required as a condition of most water permits. Applicants not increasing demand according to the table below may be directed by the jurisdiction to obtain a water permit waiver from the District in lieu of a water permit.

DETERMINE THE MOST APPROPRIATE CATEGORY FROM THE FOLLOWING LIST AND COMPLETE THE BLANK SPACES BELOW:

Square Footage of Commercial Space: \_\_\_\_\_

**GROUP I - Low to Moderate Use**

Multiply square footage by 0.0007 to estimate water needs for the following uses:

- Auto Uses
- Contractors
- Family Grocery
- Offices
- Storage
- Retail
- Bank
- Church
- General Retail
- General Medical
- Fast Food
- Gym
- Warehouse
- Florist
- Manufacture/Pedicle

**GROUP II - Mixed Use**

Multiply square footage by 0.0002 to estimate water needs for the following uses:

- Bakery
- Delicatessen
- Photographic
- Coffee House
- Intensive Municipal
- Sawmill/Shop
- Convenience Store
- Dry Cleaner
- Pizza
- Supermarket
- Candy Store
- Veterinary

**GROUP III - Miscellaneous Uses**

Each type of use has a Separate Factor. Multiply an appropriate factor as listed:

Use	Factor	Measurement (Each)	Use	Factor (Each)	Measurement (Each)
Dom		Room	Residential Units, 10 per 1000 sq. ft. (seal capacity counted)		
Child Care	0.0072	Child	Beauty Shop	0.0052	sq. ft. (seal capacity counted)
Plant Nursery	0.0006	Plant	Theater	0.0012	sq. ft. (seal capacity counted)
Landscaping	0.2	Gal. Dist.	Bar	0.002	seat capacity counted
Laundromat	0.2	washing machine	Restaurant	0.002	seat capacity counted
Gas Station	0.0916	100 gal. of pumps	Self Storage	0.0001	square footage
Meeting Hall	0.00053	square foot	Storage	0.0005	square feet (seal capacity counted)
Lux. Hotel	0.21	room	Motel/B&B	0.0012	room (seal capacity counted)
Residential Care		Call Disjunc.	Call Disjunc.		
Car Wash		Call Disjunc.	Swimming Pool	0.02	square feet surface area

PLEASE COMPLETE THE FOLLOWING:

Measurement X Factor from Above = \_\_\_\_\_ ACRE-FEET  
 (1) PREVIOUS USE \_\_\_\_\_ X \_\_\_\_\_ = \_\_\_\_\_ ACRE-FEET  
 (2) PROPOSED USE \_\_\_\_\_ X \_\_\_\_\_ = \_\_\_\_\_ ACRE-FEET  
 SUBTRACT (2) FROM (1) \_\_\_\_\_ ACRE-FEET

Assistance with completing this form may be obtained from the MPWMD at (831) 658-5801 from 8:00 - 5:00 weekdays.

$1.67 \times 0.05 = 1.65 \text{ ac ft}$   
 $3.740 - 1.65 = 2.09 \text{ ac ft}$   
 Credit

NOTE: If the result is a positive number, the jurisdiction must authorize water for the difference. In completing this Water Release Form, the undersigned (as owner or as agent for the property owner) acknowledges that any discrepancy or mistake may cause rejection or delay in processing of the application. Additionally, the applicant is responsible for accurately accounting for the type of commercial use of the business. If the type of use changes without notification to the District, water permits for the property may be canceled. In addition, changes in use or expansions completed without a water permit may be cause for interruption of the water service to the site, additional fees and penalties, the imposition of a lien on the property, and deduction of water from the local jurisdiction's allocation.

I certify, under penalty of perjury, that the information provided on this Water Release Form & Permit Application is to my knowledge correct, and the information accurately reflects the changes presently planned for this property.

Signature of Owner/Agent: Chandell Bunch Date: 2/11/2009

This form expires on the same date as any discretionary or building permits issued for this project by the city or county.

**OFFICIAL USE ONLY**

1. PLAN CHECKED FOR: \_\_\_\_\_  
 BUILDING PERMIT  
DISCRETIONARY

2. JURISDICTION'S FILE NUMBER: \_\_\_\_\_

3. PLAN CHECK DATE: \_\_\_\_\_

4. AMOUNT OF WATER DEDUCTION AUTHORIZED: \_\_\_\_\_  
 ACRE FEET

ACCOUNT TO BE DEBITED: \_\_\_\_\_  
 (Please check one)  
 Parata Allocation  
 Public Credit Account  
 Pre-Parata Account  
 NO DEBIT AUTHORIZED

5. Date of Authorization: 2/11/09  
 Authorized by: [Signature]

Notes: CREDIT ON FILE @ MPWMD



EXHIBIT J



MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT

5 HARRIS COURT, BLDG. G  
POST OFFICE BOX 85  
MONTEREY, CA 93942-0085 • (831) 658-5601  
FAX (831) 644-9560 • <http://www.mpwmd.dst.ca.us>

June 30, 2008

Anthony Lombardo, Esquire  
Lombardo & Gilles  
Post Office Box 2119  
Salinas, California 93902

**Subject: Documentation of Water Use Credit for 415 W. Carmel Valley Rd, Carmel Valley  
(APN: 187-131-044)**

Dear Tony:

In accordance with MPWMD Rule 25.5, the following Water Use Credit has been verified to be current as of this date at the site referenced above:

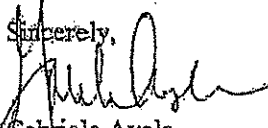
- **Credit for 3.740 acre-feet of water resulting from the permanent removal of all laundry facilities at Bernardus Lodge**

This Water Use Credit may be applied to future water use on that site at any time within a period of 60 months from April 17, 2008. After the 60<sup>th</sup> month, renewal of the Water Use Credit will be allowed only upon proof that some or all water savings represented by the credit are current. If savings are not current, a pro-rata reduction will occur. A single renewal period of 60 months is allowed; thereafter any unused Water Use Credit expires.

The Water Use Credit shown in this letter is a final determination of the Water District's General Manager. Final determinations of the General Manager may be appealed to the District Board within twenty-one (21) days after any such determination pursuant to District Rule 70. For information about the appeal process, contact the District office.

This letter should be presented to the Water Management District to utilize the credit. At such time as this Water Use Credit is applied to a water permit, one or more deed restrictions may be required to ensure permanent savings from the Water Use Credit.

Sincerely,

  
Gabriela Ayala  
Conservation Representative

U:\demand\Work\Letters\Credits\2008\County\187-131-044\_Baylaurel\_Water Use Credit\_Ayala.doc

RECEIVED

NOV 14 2008

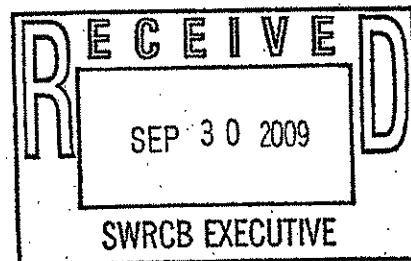
MONTEREY COUNTY  
PLANNING & BUILDING  
INSPECTION DEPT.

EXHIBIT B



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 26<sup>th</sup> 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;

- ✓ 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 2<sup>nd</sup> workshop on the July 27<sup>th</sup> 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 27<sup>th</sup> 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.

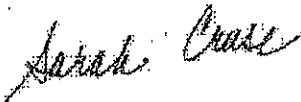
**THE CDO DOES NOT ANALYZE THE HARM TO AREA RESIDENTS, BUSINESSES AND LOCAL  
GOVERNMENTS COMPARED TO THE MARGINAL BENEFITS TO PUBLIC TRUST RESOURCES**

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 27<sup>th</sup> 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:

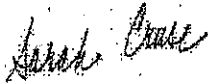
- Not order a reduction in the Carmel River base pumping;
- Not order immediate drastic reductions in Carmel River pumping that, when combined with Seaside Basin reductions, pose an immediate and "unacceptable" threat to public health and safety;
- Take into account the substantive progress being made 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 2<sup>nd</sup> workshop and will be pleased to answer any questions SWRCB might have.

Sincerely



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	37.6	28.2	0.4	66.3
	May	37.6	28.2	0.4	66.3
	Jun	52.2	27.0	0.4	79.7
	Jul	39.3	26.7	0.7	66.7
	Sep	30.8	19.1	0.7	50.6
	Oct	22.2	18.4	0.7	41.3
2009	Jan	33.0	16.4	0.9	50.4
	Feb	38.5	17.8	0.6	57.0
	Mar	51.7	22.2	0.4	74.3
	Apr				
	May				
	Jun				
	Jul				
	Aug				
<b>Year To Date</b>					
2007	Aug	37.0	28.2	1.4	66.7
2008	Aug	39.7	18.4	0.6	58.7
2009	Aug				
<b>Running 12 Month</b>					
2007	Aug	35.5	27.3	1.4	64.3
2008	Aug	37.7	19.2	0.6	57.6
2009	Aug				

Source 2009 Smith Travel Research, Inc.