



March 2, 2017

VIA EMAIL

Mr. Leslie F. Grober
Deputy Director, Division of Water Rights
State Water Resources Control Board
PO Box 2000
Sacramento, CA 95812-2000

Subject: Orders WR 2016-0016 and WR 2009-0060

Dear Mr. Grober:

Representatives of the Monterey Peninsula community met with your staff December 13, 2016, and proposed a solution to the interpretation of Condition 2 of Order WR 2009-0060 that focuses on defining what constitutes an increase in the capacity to use water at a site. That proposal and additional data was clarified and provided to SWRCB staff and other interested parties in January.

Since that meeting, there has been an exchange of correspondence regarding the District's proposal. Of the letters and emails the Board has received, 17 individuals or organizations support the proposal, while five do not. This is not dissimilar to the July 2016 hearing, where 20 speakers commented in support of an interpretation of Condition 2 that recognizes historical rights under District rules. Only one person spoke against it. When we met in December, it appeared at the conclusion of the meeting that the broad coalition of interests were in agreement that the District's proposal was workable and the District attempted to make minor revisions to the proposal to address comments at the meeting. We have had several meetings with concerned stakeholders who appeared to have walked back their desire to resolve this issue. A handful of stakeholders have convinced themselves that the District's longstanding system of permitting – which requires water availability through permanent reductions in use or an available allocation – is somehow going to result in significant increased water use and diversions from the Carmel River.

Those concerns are unfounded. The comment letters primarily focus on the risk of transfers of water use from one site to the next. The District has provided evidence that the available credit which could transfer is small (less than 100 acre feet), most property owners won't transfer a credit because water availability on a site has value, and the likelihood of that transferring is small due to significant CEQA requirements that must be met. *Nevertheless, if the prospect of moving a water use from one site to another is of concern to the State Water Board, we are willing to consider further limiting the ability to transfer credit if pumping from the river shows a significant increase from recent levels or if the Effective Diversion Limit is at risk.*

However, we ask you to consider the following:

- Our proposal is to use the already existing system of counting residential fixture units and commercial water use capacity factors to determine the baseline of use, rather than actual billing records from some particular point in time. (Actual billing records are fraught with problems: there may have been a vacancy at that time, a new owner may have chased out tenants

in order to remodel, the business may have been failing, a fire, there may be a prospective buyer who doesn't have access to billing records, enforcement against new versus existing uses is difficult, etc.) Also, as stated in our meetings and recognized by the SWRCB, this system has worked and has resulted in water consumption reductions in our community that are leading in the State.

- We fully grasp that this may be perceived as potentially allowing a modest increase in actual use at a particular location relative to the use that occurred at a specific point in time, because our method recognizes historically documented fixtures or uses, plus investments in permanent water savings (credits), and water that was allocated to the jurisdictions prior to Order 95-10 (debits), yet all of this discussion is about a very small amount of water use capacity that has already been "in the system" at some point during recent years. Hence, it is not new water. The net effect is no increase in water use capacity from what could have been used if there is no change.
- In April 2012 the State Board said that "*The intent of Condition 2 is to limit an increase in water consumption from the Carmel River that may be caused by regional or local zoning and land use changes to the conditions that existed at the time of the Order.*" Yet a variety of programs initiated since the 2009 CDO took effect have reduced pumping from the Carmel River by 3,000 acre-feet. Let us support enforcement of the CDO with a multiplicity of programs and regulations that have proven effective. This current issue of interpretation of Condition 2 will significantly deter participation and compliance with the District's effective water consumption reduction programs.

In summary, the District's rules and regulations are designed to reduce consumption system-wide and to ensure compliance with the overall Effective Diversion Limit. These rules also provide clear, well understood regulations for local land use decisions. As was substantially discussed in the State Water Resources Control Board hearing July 2016, the existing interpretation of Condition 2 results in properties atrophying, affects jobs, commerce, and neighborhoods and undermines the longstanding rules this community has operated under – with no significant benefit to our community's compliance with the CDO and the Effective Diversion Limit.

Thank you for the opportunity to work with your staff and educate them on the District's programs. In response to Chair Marcus's comments at the hearing, we have worked diligently with the wide range of community stakeholders and SWRCB staff. We believe we are very close to a workable solution for everyone. We share the same goals and would be interested in meeting with you to answer any questions and attempt to bring this matter to conclusion.

Sincerely yours,



David J. Stoldt
General Manager

cc: Felcia Marcus, Chair, SWRCB
John O'Hagan
Mariana Aue
Kathy Mrowka
Gordon Burns, California Environmental Protection Agency
Kim Craig, Governor's Office