

March 10, 2017

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Mr. John O'Hagan
SWRCB
PO Box 2000
Sacramento, CA 95812-2000

Subject: MPWMD Interpretation of Condition 2 of Orders WRO 2016—0016
and 2009-0060

Dear Mr. O'Hagan:

Sierra Club and the Planning and Conservation League wish to respond to David Stoldt's letter dated March 2, 2017, submitted on behalf of the MPWMD. That letter asks the staff to interpret Condition 2 of WRO 2016-0016 and 2009-0060 in a manner that would allow it to approve new development that would use, according to the letter's estimate, approximately 100 AFY. The water would be pumped from the Carmel River alluvium by California-American.

Sierra Club and the Planning and Conservation League do not believe the use of additional Carmel River for growth through the proposed MPWMD interpretation of Condition 2 is consistent with the intent of WRO 2016—0016. Section 5.2 of the 2016 Order states:

“Cal Am's application proposes a starting Carmel River diversion limit of 8310 acre feet per annum, which is approximately 1000 acre feet less than the requirement of WR 2009-0060 for WY 2015-16, and approximately the five year average of pumping from WY 2009-2010 until WY 2012-2013. Staff's preliminary recommendation had suggested reducing this limit to 7990, which is the most recent six year average of diversions with adjustments to reflect modifications to ASR accounting.....Applicants submitted a letter in response to the preliminary [staff] recommendation requesting again that the State Water Board set the EDL at 8310.....This information [in applicants' letter] indicates that because of a scheduled reduction in allowable pumping from the Seaside Groundwater Basin of approximately 400 afa starting in WY 2017-2018, setting the diversion limit at

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7990 afa would require improvement on conservation levels from those achieved during the historic drought. Thus, setting the EDL at 7990 would therefore require immediate efforts to lower demand or cultivate alternative sources., rather than only requiring such efforts if milestones are missed.....The only comments submitted in support of lowering the proposed EDL were submitted by Planning and Conservation League and the Sierra Club....The two environmental organizations have submitted a new joint letter explaining why they now support the EDL level of 8310 for two primary reasons: (1) Cal Am has entered into a forbearance agreement with Rancho Canada which will increase flows in the River by 300 afa, reducing the fisheries impact of a slightly higher pumping level than that used over the past three years.....” Order at 12-13.

In its final order, the Board adopted the higher diversion level requested by Cal - Am. The Board took into consideration as well increased demand arising from “bounce back” from depressed economic conditions arising from the 2008-2009 economic crisis. Now, through its proposed interpretation of Condition 2, which contemplates baseline usage to be calculated on the basis of a transfer of water credits from one [commercial] property to another, the District is in effect seeking authorization of up to another 100 afa for growth. Sierra Club and PCL believe that the amount of water that would be available for growth may in fact be underestimated, to the extent that transfer of credits between commercial properties and inter jurisdictional allocation transfers would be allowed. According to the District, remaining unallocated water is approximately 90 acre feet. With respect to onsite water credits, the District reports 26 AF of Water Credits on the identified commercial sites that were not reflected in last year’s demand figures. In its “Water Credits” memo, the District states it has identified 70.5 of water credits documented for Non Residential reductions in use. See Sierra Club and PCL letter dated February 1, 2017, page 2. Thus by the District’s own calculations there could be as much as 190 afa available for growth at commercially zoned property throughout the Peninsula. Although it may be true that such transfers would be subject to CEQA compliance, and that the transfers could only occur through transactions between willing buyers and sellers of water credits, if the transfers are done one at a time, it is possible that FONSI’s could be prepared. See PCL and Sierra Club Letter dated February 1, 2017. The PCL and Sierra Club letter concludes:

“Both Sierra Club and PCL believe that authorization of such increased uses for commercial purposes, based on transfers of water credits or jurisdictional allocations sets a very poor precedent to other users and may discourage efforts at conservation by these users during the next five years.” Letter at page 3.

In David Stoldt’s letter of March 2, 2017, it is suggested that the District would make appropriate adjustments to demand [use] in the event that in a future year the Effective Diversion Limit could be exceeded and if there is a significant increase in diversions from the Carmel River. Mr. Stoldt’s letter states:

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“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.” This promise provides no comfort to PCL or Sierra Club, and seems to contemplate a curtailment of transfers only after there has already been a significant increase in pumping levels arising from the inclusion of paper water (credits) in the calculation of baseline water use for the purpose of determining compliance with Condition 2. Such significant increases in pumping levels would have the potential to adversely affect the public trust resources of the River. See PCL and Sierra Club letters of 12/ 2 /2015, 12/22/2015, 7/11/2016, 9/2/16, 2/1/17 . See also WRO 2009-0060 at 37-39. Additionally it notable that the District offers no forbearance agreement that would offset the effects of additional pumping from the River alluvium

Sierra Club and PCL therefore once again urge Staff to reject the MPWMD proposal. Once an alternative, reliable water source comes on line, through recycled water, different considerations may apply, and the District could renew its proposal at such later time.

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