

April 30, 2015



Felicia Marcus
Board Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Dear Chairwoman Marcus,

I am writing to inform the SWRCB about my concerns regarding the proposed Pacific Grove Local Water Project (PGLWP) that will come before you at the May 5, 2015 board meeting as part of consent item #4 (WRFP Project # 3322-030).

My main concern comes from the fact that the project is being represented as a conservation effort to “reduce the pumping requirements from the Carmel River Watershed”. See first attachment: General Information Package.

However, what is not mentioned anywhere in the package (or disclosed to SWRCB staff) is that the City of Pacific Grove has already begun the process of obtaining an entitlement to 90afy with 35afy going to “others” of new potable water along with procedures for issuing water use permits in exchange for the projected (and unproven) non-potable output of the PGLWP. See second attachment: Draft Ordinance from the Monterey Peninsula Water Management District (MPWMD) Water Supply Planning Committee. It should be noted that the attorney for the MPWMD, Mr David Laredo, is also attorney for the City of Pacific Grove.

This proposed “re-use” of potable water from irrigation use (seasonal) to residential and commercial use (constant) actually represents an intensification of water demand, not a reduction. It should also be noted that the Carmel River Watershed is currently under State issued Cease and Desist Orders (WR 2009-0060 and WR 95-10) due to an over-draft condition and a moratorium for new connections is in place. See third attachment: SWRCB April 9, 2012 letter to California-American Water (Cal-Am).

I support reclaiming wastewater and recycling it into non-potable water. This non-potable water can then be used to irrigate our golf course, cemetery, etc. This effort can legitimately be called conservation and I support it.

However, taking conservation credits to offset additional water use associated with new use can not legitimately be called conservation and I do not support it. This scheme is simply transferring a resource into a more profitable and intensive use area, i.e., growth, which the public gets to finance.

Please consider these facts when you make your decision. I am asking that you deny adding this project to the WRFP project list until the true scope of this project, which claims to be a “conservation” effort, has been disclosed and presented to you and staff.

Luke Coletti

Pacific Grove, CA

Print

Save

GENERAL INFORMATION PACKAGE

I. TYPE OF ASSISTANCE REQUESTED			
Amount of Assistance Requested: \$5,336,000.00			
Proposed Security: <input checked="" type="checkbox"/> Wastewater revenues and fund <input type="checkbox"/> Water revenues and fund <input checked="" type="checkbox"/> Other:			
Project Type(s): <input type="checkbox"/> Wastewater <input checked="" type="checkbox"/> Water Recycling <input type="checkbox"/> Estuary <input type="checkbox"/> Nonpoint Source			
II. APPLICANT INFORMATION			
Applicant Name: City of Pacific Grove			
Street Address: 300 Forest Ave	City: Pacific Grove	State: CA	Zip+4 Code: 93950-3321
Applicant Type: <input checked="" type="checkbox"/> Public <input type="checkbox"/> Indian Tribe <input type="checkbox"/> Nonprofit <input type="checkbox"/> Other: Specify _____			
Charter City/County: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Mailing Address: 300 Forest Ave	City: Pacific Grove	State: CA	Zip+4 Code: 93950-3321
Congressional District(s): 20 Sam Farr			
State Senate District(s): 17 Bill Monning			
State Assembly District(s): 29 Mark Stone			
County: Monterey	Federal Tax ID No.: 94000388		
Data Universal Numbering System (DUNS) No.: 069117844			
Regional Water Board where the project will take place: <input type="checkbox"/> 1 (North Coast) <input type="checkbox"/> 2 (San Francisco Bay) <input checked="" type="checkbox"/> 3 (Central Coast) <input type="checkbox"/> 4 (Los Angeles) <input type="checkbox"/> 5 (Central Valley) <input type="checkbox"/> 6 (Lahontan) <input type="checkbox"/> 7 (Colorado River) <input type="checkbox"/> 8 (Santa Ana) <input type="checkbox"/> 9 (San Diego)			
Authorized Representative Name, Title: Thomas Frutchey, City Manager			
Phone No.: (831) 648-3106		Email Address: tfrutchey@ci.gp.ca.us	
Contact Person Name: James M. Brezack			
Phone No.: (925) 478-8520		Email Address: jbrezack@brezack.com	
Local Counsel Name: David Laredo			
Phone No.: (831) 646-1502		Email Address: dave@laredolaw.net	
III. PROJECT INFORMATION AND PROPOSED SCHEDULES			
Project Description: <i>(Enter a brief description of the project)</i> The City of Pacific Grove will construct a new Satellite Recycled Water Treatment Plant with a capacity of 125 AFY. The proposed Project will decrease the amount of potable water currently supplied by California American Water for local irrigation and reducing its diversions from the Carmel River.			
Project Title: Pacific Grove Local Water Project			
NPDES Permit or WDR Order No. (if applicable): N/A			
Current Year Estimated Population Served: 15,500			

State Use Only	
CWSRF Project #	
Project Manager	
Date Received	

Estimated or Actual Date

Estimated Project Schedule:

Complete Construction Application	_____
1) General Information Package	April 2014
2) Technical Package	June 2015
3) Environmental Package	March 2015
4) Financial Security Package	January 2015
Complete Project Plans and Specifications	May 2015
Advertise Bids	March 2015
Issue Notice to Proceed	May 2015
Complete Construction	September 2016

Consultation with Other Agencies

Please list other Federal and State agencies that have been involved in this project (e.g. planning, CEQA/NEPA consultation, funding, etc.), their contact information if known, and estimated dates for resolution of any issues.

None Yet

Partnering Agencies

Please list all other agencies that have an interest in this project. Provide contact information if known.

California American Water Company (CAW), Monterey Peninsula Water Management District (MPWMD), Monterey Regional Water Pollution Control Agency (MRWPCA), Carmel Area Wastewater District (CAWD), Pebble Beach Community Services District (PBCSD), Pebble Beach Company.

IV. ESTIMATED PROJECT CAPITAL COSTS AND FUNDING SUMMARY

<u>Cost Classification</u>	<u>Total Project Costs</u>	<u>Other Funding</u>	<u>Requested Financing</u>
A. Facilities Planning (a)	\$ _____	\$ _____	\$ 00 _____
B. Facilities Design (a)	\$ _____	\$ _____	\$ 343,400.00 _____
C. Construction Management (a)	\$ _____	\$ _____	\$ 219,776.00 _____
D. Value Engineering (a)	\$ _____	\$ _____	\$ 00 _____
E. Administration (a)	\$ _____	\$ _____	\$ 68,680.00 _____
F. Facilities Construction Total	\$ _____	\$ _____	\$ 3,434,000.00 _____
G. Contingency	\$ _____	\$ _____	\$ 1,030,200.00 _____
H. Pre-Purchase Material/Equipment	\$ _____	\$ _____	\$ 00 _____
I. Land and Right-of-Way (b)	\$ _____	\$ _____	\$ 00 _____
J. Other Costs	\$ _____	\$ _____	\$ 240,380.00 _____
<i>Explain: Contractor Profit _____</i>			
K. Total Project Costs	\$ _____	\$ _____	\$ 5,336,000.00 _____
<i>(a) Soft costs may be provided for planning, design, value engineering, construction management, and administration costs.</i>			
<i>(b) For wastewater and water recycling projects, Land and Right-of-Way costs are not eligible.</i>			
Portion of the Total Project Costs that will serve existing facilities and/or existing communities			\$ 5,336,000.00 _____
Portion of the Total Project Costs that will serve new development			\$ 0.00 _____

V. TECHNICAL SPONSORSHIP

If the Division were to set up a technical sponsorship program, would you be interested in providing in-kind technical assistance to another CWSRF applicant in exchange for special financing? Note that checking "Yes" in no way obligates you to participate in this potential program or guarantees that this incentive will be available or offered.

Yes No

If Yes, please indicate the areas where you would be willing to provide assistance:

- Assistance in completing a funding application
- Assistance in writing a facilities plan/project report
- Assistance in developing a Capital Improvement Plan
- Assistance in conducting a water or energy audit
- Assistance in building Operations & Maintenance capacity
- Other: Specify _____

VI. SUSTAINABILITY

A project that supports or incorporates one or more of the following sustainability goals receives one priority point for each area addressed.

Label the requested documents as Attachment G1, G2, G3, etc.

<input type="checkbox"/>	The project supports infill development or results in the reuse or redevelopment of land in an area presently served by transit, streets, water, sewer and other essential services. G1 – Provide a map highlighting the infill or redevelopment areas.
<input checked="" type="checkbox"/>	The applicant maintains a Capital Improvement Plan, an Asset Management Plan, or has performed a full-cost pricing analysis, or the project incorporates climate change adaption. G2 – Provide copies or links to these plan or analysis.
<input checked="" type="checkbox"/>	The project protects environmental or agricultural resources such as farm, range and forest lands; wetlands and wildlife habitats; recreational lands such as parks, trails, and greenbelts; or landscapes with locally unique features or areas identified by the state as deserving special protection. G3 – Provide a map highlighting the areas that will be protected.
<input type="checkbox"/>	The project is cited in one or more regional environmental management plans. G4 – Provide copies or links to these plans.
<input checked="" type="checkbox"/>	The project incorporates wastewater or storm water/urban runoff recycling, water conservation, energy conservation, low impact development, or reduced use of other vital resources. G5 – Explain the reason for the energy savings and the expected energy savings.
<input type="checkbox"/>	The project uses low-impact treatment for lower lifecycle operating costs through reduced energy, chemical, or other inputs. G6 – Explain the reason(s) for the reduced operating costs.

CERTIFICATION AND SIGNATURE OF AUTHORIZED REPRESENTATIVE

To the best of my knowledge and belief, I certify that I am authorized to submit this application; the information provided in this application is true and correct; the documentation has been duly authorized by the governing body of the applicant; and the entity possesses the legal authority to apply for the financing and enter into a financing agreement with the State Water Resources Control Board and to finance and construct the proposed facilities.

Name of Authorized Representative: Thomas Frutchey Title: City Manager

Signature of Authorized Representative: Thomas Frutchey Date: 3-13-15

City of Pacific Grove Local Water Project Attachments to the SRF General Information Package

Attachment G2.

The City of Pacific Grove maintains a Capital Improvement Plan (CIP). The CIP identifies needed capital projects and equipment purchases, provides an implementation schedule, identifies options for capital project financing, and links capital projects to the operating budget.

A weblink to the City's CIP is:

<http://www.ci.pg.ca.us/Modules/ShowDocument.aspx?documentid=6972>

Attachment G3.

The Pacific Grove Local Water Project (PGLWP) protects environmental and recreational lands. The following two figures present the protected lands:

Recreational Areas Figure 1

The Pacific Grove Golf Course and Cemetery lands will be protected by this project. The PGLWP could also be expanded to service other city parks and green spaces. These recreational land uses require a supply of irrigation and toilet flushing water. The PGLWP will replace the current interruptible use of potable water with a new sustainable supply of recycled water. Lack of adequate potable water has been a concern throughout the region.

City of Pacific Grove Local Water Project Attachments to the SRF General Information Package

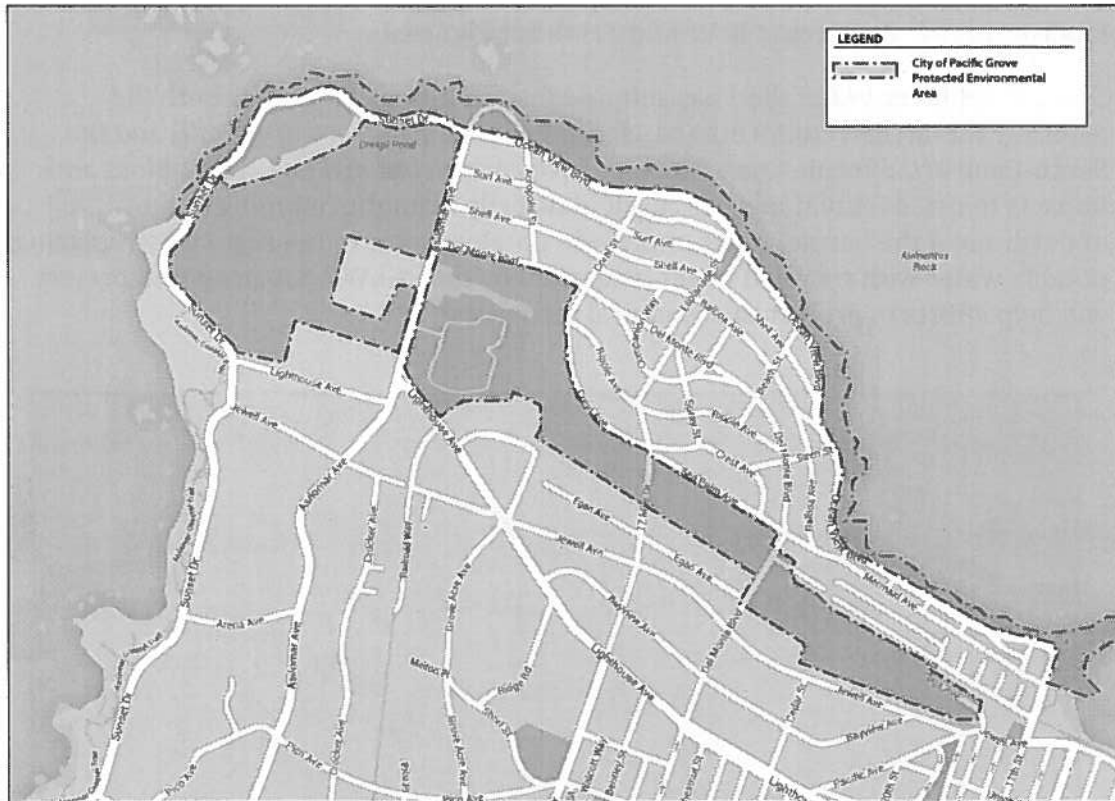
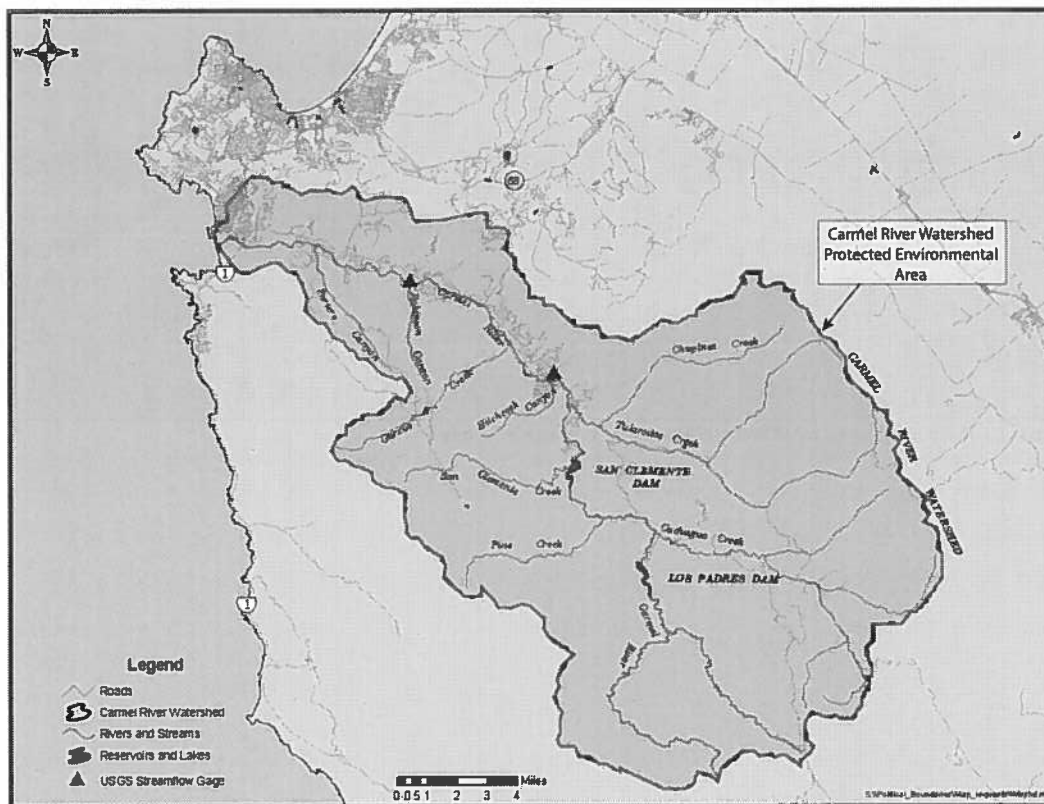


Figure 1 - Pacific Grove Local Water Project Protected Areas

City of Pacific Grove Local Water Project Attachments to the SRF General Information Package

Environmental Resources & Wildlife Habitat Figure 2

The Carmel River Watershed has suffered loss of critical habitat for both the federally threatened California red-legged Frog (*Rana aurora draytonii*) and the South-Central California Coast Steelhead (*Oncorhynchus mykiss*). Habitat loss and impacts to listed individuals has resulted directly from the pumping of the underdrain of the Carmel River to provide potable water to the region. By replacing potable water with recycled water generated by the PGLWP, the proposed project will help efforts to protect these natural resources.



City of Pacific Grove Local Water Project Attachments to the SRF General Information Package

Attachment G5.

The Pacific Grove Local Water Project (PGLWP) consists of the recycling of wastewater as a substitute for the use of 125 acre-feet per year of potable water for landscape irrigation and toilet flushing. The project will in the future incorporate dry and wet weather storm water recycling to further reduce potable water demands and to reduce storm water discharges for the protection of natural resources from impaired water quality impacts. The reduction of potable water demand reduces the pumping requirements from the Carmel River Watershed.

The PGLWP will also reduce the overall energy consumption required to meet the region's water supply. The California-American Water Company (CAW) is in the process of implementing its Monterey Peninsula Water Supply Project to include the operation of a new seawater desalination plant. Coordination by the City of Pacific Grove with CAW has identified that the Local Water Project will directly result in the reduction of operational requirements at their desalination project. The production of recycled water is less energy intensive for the desalination of seawater. The production of 125 AFY of recycled water for the PGLWP is estimated to require approximately 250,000 kwh/day of energy. The production of 125 AFY of potable water via seawater desalination is estimated to require approximately 750,000 kwh/day of energy. Therefore, the PGLWP will result in approximately 500,000 kwh/day lower energy use for the production of 125 AFY of water than required by the CAW desalination plant.

WATER SUPPLY PLANNING COMMITTEE

ITEM: ACTION ITEM

4. CONSIDER RECOMMENDATION TO THE BOARD TO CONDUCT FIRST READING OF PACIFIC GROVE ORDINANCE

Meeting Date: March 17, 2015

From: David J. Stoldt,
General Manager

Prepared By: Arlene Tavani
Suresh Prasad

SUMMARY: Attached for your review is **Exhibit [4-A](#)** is a draft ordinance that would amend MPWMD Rules 11, 21, 23.1, 33 and add Rule 23.8 to establish a Pacific Grove recycled water supply entitlement and procedures for issuing water use permits. Staff will review this draft ordinance with the committee.

RECOMMENDATION: Staff recommends that the committee determine if this draft ordinance should be submitted to the Board for first reading.

EXHIBIT

[4-A](#) Draft Ordinance Amending Rules 11, 21, 23.1, 33 and Adding Rule 23.8 to Establish a Pacific Grove Recycled Water Supply Entitlement and Procedures for Issuing Water Use Permits

EXHIBIT 4-A

ORDINANCE NO. _____

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
AMENDING RULES 11, 21, 23.1, 33 AND ADDING RULE 23.8
TO ESTABLISH A PACIFIC GROVE RECYCLED WATER SUPPLY
ENTITLEMENT AND PROCEDURES FOR ISSUING WATER USE PERMITS**

FINDINGS

1. The Monterey Peninsula Water Management District (MPWMD or District) is charged under the Monterey Peninsula Water Management District Law with the integrated management of all ground and surface water resources in the Monterey Peninsula area.

2. The Monterey Peninsula Water Management District Law grants MPWMD general and specific powers to cause sufficient water to be available for present and future beneficial use or uses of lands or inhabitants within the District. MPWMD Rule 30 requires the District to establish a specific Allocation for each Jurisdiction and provides that the District also may establish Water Entitlements as necessary to manage water supplies throughout the District.

3. The City of Pacific Grove (City) committed to construct the Pacific Grove Local Water Project (Project) within the City. The Project shall create non-potable recycled water supply of 125 acre-feet per year (afy) to meet irrigation needs on the City-owned Pacific Grove Golf Links and El Carmelo Cemetery and will thereby reduce potable water metered demand on the California American Water Company (Cal-Am) water system by 125 afy. The Project includes a new Satellite Reclaimed Water Treatment Plant facility with a design flow capacity of 0.25 million gallons per day (MGD), and will recycle a portion of the City's municipal wastewater at the Point Pinos Wastewater Treatment Plant. Potable water freed by reason of Project operations shall be available for re-use; a remainder will be conserved and suspended from use during the period that Cal-Am is diverting water from the Carmel River system without a valid basis of right.

4. The City certified an Environmental Impact Report (EIR) for the Project on November 19, 2014, in accord with the California Environmental Quality Act (CEQA). In certifying this EIR, the City made specific findings which, by this reference, are made an integral part of this ordinance, as if set forth in full.

5. A key purpose for the Project is to assist the City, the District and Cal-Am to meet requirements of State Water Resources Control Board (SWRCB) Order WR 95-10, whereby the SWRCB concluded Cal-Am was diverting approximately 10,730 acre-feet per year of water from the Carmel River system without a valid basis of right. Order WR 95-10 directed Cal-Am

to terminate unlawful diversions from the Carmel River system. The Project reduces metered demand and Cal-Am production requirements from the Carmel River system. The Project is scheduled to be fully on line and delivering 125 afy on or before December 31, 2016.

6. This ordinance suspends use of a portion of the potable water previously diverted by Cal-Am and used by the City to irrigate its Golf Links and El Carmelo Cemetery, during that period before Cal-Am is able to cease diverting water from the Carmel River system without a valid basis of right.

7. This ordinance establishes a Water Entitlement for the City by which Cal-Am may convey water through its distribution system to City subscribers based upon a Water Use Permit, and adds water to Jurisdictional Allocations under Rule 33. This ordinance also establishes procedures under which City subscribers may apply to the District for Water Use Permits receive and use water diverted by Cal-Am.

8. This ordinance amends Rules 11 (Definitions), 21 (Applications), 23.1 (Action on Application for a Water Use Permit on a Benefited Property), 33 (Jurisdictional and Reserve Water Allocations) and adds Rule 23.8 (Permits) for Water the Rules and Regulations of the Monterey Peninsula Water Management District.

9. Significant portions of the water made available by the Project shall assist Cal-Am's efforts to comply with SWRCB Order WR 95-10, and Cease & Desist Order 2009-060.

10. The MPWMD is a responsible agency under CEQA. As a CEQA responsible agency, the MPWMD may rely on the City's CEQA compliance for this ordinance. Based on this EIR, the MPWMD makes the following findings:

[insert MPWMD's CEQA findings].

NOW THEREFORE, be it ordained as follows:

Section One: Short Title

This ordinance shall be known as the Pacific Grove Recycled Water Supply Entitlement Ordinance of the Monterey Peninsula Water Management District.

Section Two: Purpose

The purpose of this ordinance is to confirm and quantify replacement of existing potable water use with recycled water by reason of the Pacific Grove Local Water Project, to quantify the portion of replaced water supply retired from use during the period before Cal-Am is able to

cease diverting water from the Carmel River system without a valid basis of right, and to confirm the remainder portion of water that may be re-used by the City of Pacific Grove and other jurisdictions via deliveries from Cal-Am of water from its various sources, including water from the Carmel River system.

Section Three: Amendment of Rule 11, Definitions

The following definitions in Rule 11 shall be amended as shown in bold italics (*bold italics*) and strikeout (~~strikethrough~~).

ASSIGNMENT DOCUMENT - “Assignment Document” shall refer to either (1) the document titled, “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 39 Water Entitlement and Water Use Permit” issued and recorded by the Pebble Beach Company, or (2) ~~to~~ “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 132 Water Entitlement and Water Use Permit” issued and recorded by the City of Sand City, *or to “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. ___ Water Entitlement and Water Use Permit” issued and recorded by the City of Pacific Grove,* and (4) to “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. ___ Water Entitlement and Water Use Permit” issued and recorded by Malpasos Water LLC.¹

BENEFITED PROPERTY – “Benefited Property” shall mean either (1) those properties located in the unincorporated portion of the Del Monte Forest described on Exhibit “A” to Monterey Peninsula Water Management District Ordinance No. 109, or (2) Sand City Sites located within the jurisdictional limits of the City of Sand City pursuant to Monterey Peninsula Water Management District Ordinance No. 132, (3) *Pacific Grove Sites located within the jurisdictional limits of the City of Pacific Grove pursuant to Monterey Peninsula Water Management District Ordinance No. ____,* or (4) those properties that are subject to a subscription agreement with Malpasos for beneficial water use on that property pursuant to Monterey Peninsula Water Management District Ordinance No. ____.²

WATER USE PERMIT -- “Water Use Permit” means a writing from MPWMD which evidences the dedication of the Water Entitlement as a present vested property right enuring to the use and benefit of one or more of the Benefited Properties. A Water Use Permit shall by non-discretionary ministerial action, cause the present Connection to or

¹ [Note (not for inclusion in the published ordinance): This text presumes the Board shall adopt the Malpasos Water Entitlement Ordinance.]

² [Note (not for inclusion in the published ordinance): This text presumes the Board shall adopt the Malpasos Water Entitlement Ordinance.]

modification of the California American Water Distribution System for Benefited Properties upon designation of the location of use and upon payment of applicable Connection Charges and fees, and issuance of a Water Permit as provided in Rule 23.5, ~~or 23.6, 23.7,~~ **or 23.8.**³

Section Four: Amendment of Rule 21, Applications

Section E. of MPWMD Rule 21 shall amended as shown in bold italics (*bold italics*) and strikeout (~~strike through~~):

E. APPLICATION FOR WATER USE PERMIT FOR “BENEFITED PROPERTIES” AS THAT TERM IS DEFINED IN RULE 11, 23.5, AND 23.6, 23.7 AND 23.8

Each application for a Water Use Permit shall follow the process set forth in Rule 23.1. A proper Applicant for a Water Use Permit may be the property owner or any agent thereof. The application for a Water Use Permit shall be deemed complete when the Applicant submits all of the following:

1. A completed Water Use Permit application,
2. A copy of the recorded Assignment Document which is either (1) “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 39 Water Entitlement and Water Use Permit,” or (2) “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 132 Water Entitlement and Water Use Permit” (3) “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. ___ Water Entitlement and Water Use Permit” specific to the application Site, or (4) *“An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. ___ Water Entitlement and Water Use Permit”* specific to the application Site.⁴
3. Processing fees.

Section Five: Amendment of Rule 23.1, Action on Application for a Water Use Permit on a Benefited Property.

³ [Note (not for inclusion in the published ordinance): This text presumes the Board shall adopt the Malpas Water Entitlement Ordinance.]

⁴ [Note (not for inclusion in the published ordinance): This text presumes the Board shall adopt the Malpas Water Entitlement Ordinance.]

Rule 23.1 shall be revised as shown in bold italics (***bold italics***) and ~~strikeout (strikethrough)~~

The Application and Process for Water Use Permits issued after May 24, 2007 shall be controlled by this Rule in conjunction with either Rule 23.5, ~~or~~ Rule 23.6, Rule 23.7, ***or Rule 23.8.***⁵

A. PROCESS

1. Action on Application for a Water Use Permit

a. The General Manager shall review the application and determine whether the Applicant has met the criteria for a Water Use Permit. If additional information is required to complete the application, the Applicant shall be notified in writing within thirty (30) days of the initial application.

b. The General Manager shall ensure that the Assessor's Parcel Number of the Benefited Property shown on the Assignment Document matches the APN(s) shown on the spreadsheet of water purchasers provided to the District by ~~either~~ the Pebble Beach Company, ~~or~~ the City of Sand City, ***the City of Pacific Grove,*** or Malpas Water LLC.⁶

(1) When the APN(s) shown on the Assignment Document does not match the spreadsheet of water purchasers, the General Manager shall contact the appropriate Water Entitlement holder to verify the validity of the Assignment Document.

(2) When the APN shown on the Assignment Document is found to be incorrect, the Applicant shall submit a corrected and recorded Assignment Document from the Water Entitlement holder prior to issuance of a Water Use Permit. The Water Entitlement holder shall notify the District in writing of any correction.

⁵ [Note (not for inclusion in the published ordinance): This text presumes the Board shall adopt the Malpas Water Entitlement Ordinance.]

⁶ [Note (not for inclusion in the published ordinance): This text presumes the Board shall adopt the Malpas Water Entitlement Ordinance.]

- c. The General Manager shall prepare and execute a Water Use Permit for the APN(s) shown on the Assignment Document.
- d. The original Water Use Permit shall be mailed to the Applicant.
- e. The District shall retain one copy of the Water Use Permit and the copy of the Assignment Document.

A. **AMENDMENT OF WATER USE PERMIT**

- 1. A Water Use Permit may be amended to reflect a Change of Ownership of a Parcel.
- 2. A Water Use Permit may be amended to reflect assignment of water previously held collectively by two or more Parcels under a Water Use Permit. A written request for assignment shall be submitted to the District, along with processing fees and ownership information sufficient to prepare a new Water Use Permit.
- 3. A Water Use Permit may be amended to reflect newly-assigned Assessor's Parcel Numbers when a Benefited Property is subdivided into two or more Parcels. A written request for amendment shall be submitted to the District, along with processing fees, evidence of the subdivision approval by the land use Jurisdiction and ownership information sufficient to prepare a new Water Use Permit.

Section Six: Allocation of Water Pursuant to Rule 33 - JURISDICTIONAL AND RESERVE WATER ALLOCATIONS

Upon creation of the Pacific Grove Water Entitlement pursuant to Rule 23.8, the District shall place 35 acre feet of metered water demand into the Jurisdictional Allocations set by Rule 33A, and shall distribute the increment of water, pro rate, in accord with the allocations referenced in Rule 33.

Section Seven: Addition of Rule 23.8, Permits for Water from Cal-Am Water Distribution System Dedicated for Use in Connection With Pacific Grove Water Entitlement

The following text shall be added as Rule 23.8 – Permits for Water from the Pacific Grove Water Entitlement:

RULE 23.8 – PERMITS FOR WATER FROM THE PACIFIC GROVE WATER ENTITLEMENT

A. WATER ENTITLEMENT

1. The Pacific Grove Water Entitlement confers on the City of Pacific Grove a vested property right to take up to 60 Acre-feet of water per Water Year (afy) delivered from the Cal-Am Water Distribution System (CAW System). For so long as the Pacific Grove Water Entitlement continues, City subscribers, or for interim use by California American Water; Cal-Am shall divert sufficient water to meet 60 afy of metered water demand per Water Year into the CAW System and deliver this amount of water to City of Pacific Grove subscribers or Cal-Am customers. The amount of the Pacific Grove Water Entitlement during each Water Year shall equal the amount of water diverted by Cal-Am Water, conveyed through the CAW System to Pacific Grove Water Entitlement subscribers or Cal-Am customers.
2. During the period before Cal-Am is able to cease diverting water from the Carmel River system without a valid basis of right, 35 afy of metered water demand per Water Year previously used by the City to irrigate its Golf Links and El Carmelo Cemetery shall be suspended from use. Effective upon the date all Cal-Am diversions of water from the Carmel River system are made upon a valid basis of right (e.g Cal-Am has complied with limits set by SWRCB Orders WR 95-10 and 2009 060), the 35 afy of suspended water use shall be freed for use, and added to the Pacific Grove Water Entitlement set forth in Paragraph A 1 of this Rule.
3. Pacific Grove is authorized to separately sell, transfer and convey to owners of Benefited Properties, for such consideration and upon such terms and conditions as Pacific Grove in its discretion may determine, portions of the Pacific Grove Water Entitlement as it may choose. Any portion of the Pacific Grove Water Entitlement conveyed to the owner of a Benefited Property shall vest in the owner of the Benefited Property, and appurtenant to title to the particular Benefited Property, at the time the Water Use Permit is issued as evidence of such conveyance.
4. The Pacific Grove Water Entitlement shall be separate and distinct from any other Allocations provided in Rule 30. The existence of the Pacific Grove Water Entitlement shall not affect any existing use of water in the

County of Monterey or any City, or any existing or future Allocation to the County of Monterey or any City.

B. APPLICATIONS FOR AND ISSUANCE OF WATER USE PERMITS

1. Any person that has an Assignment Document for a portion of the Pacific Grove Water Entitlement may file an Application for Water Use Permit pursuant to Rule 21, Section E, and Rule 23.1.
2. Upon compliance with Rule 21, Section E, and Rule 23.1, including payment of all applicable fees, each holder of an Assignment Document for a portion of the Pacific Grove Water Entitlement shall be entitled to issuance of a Water Use Permit by the General Manager. The Water Use Permit shall authorize use only through a Residential or a Non-Residential connection, only on the Benefited Property described in the Water Use Permit, and only for up to the amount of the Pacific Grove Water Entitlement that is described in the Assignment Document.
3. Each Water Use Permit issued pursuant to this Rule 23.8 shall be appurtenant to the title of the Benefited Property listed in the Water Use Permit and shall vest in the owner of the Benefited Property a property interest for the use and benefit of the quantity of Potable water (in Acre-Feet) per year specified in the Water Use Permit, produced by the CAW System.
4. Upon issuance of a Water Use Permit to the owner of a Benefitted Property, the General Manager shall simultaneously make a record of the quantity of the Pacific Grove Water Entitlement conveyed to the owner of the Benefited Property and a commensurate reduction in the remaining amount of the Pacific Grove Water Entitlement, if any, that thereafter still is held by Pacific Grove Water.

B. WATER USE PERMIT LIMITATIONS

Water Use Permits issued under this Rule 23.8 shall be subject to the following limitations:

1. The Water Use Permit and subsequent Water Permit shall not limit the power of the District to curtail water use in the event of any emergency caused by drought, or other threatened or existing water shortage, as defined in Section 332 of the Monterey Peninsula Water Management Act

or other provision of law, including without limitation the power of the District to terminate water service as a consequence of a violation of water use restrictions.

2. The Water Use Permit and subsequent Water Permit shall not relieve or reduce any obligation of the holder of the Permit to pay customary fees, Connection Charges, User fees, surcharges, taxes, utility taxes and/or other customary monetary obligation which may be imposed by the California Public Utilities Commission, Cal-Am, or the District upon Water Users of the same class within the Cal-Am service area, including but not limited to fees and charges due and payable to the District by reason of Rule 24 nor shall such Permit limit the authority of Cal-Am or the District to terminate water use for non-payment of such fees and changes.
3. Notwithstanding any other provision of this Rule:
 - a. The Pacific Grove Water Entitlement allocated pursuant to Rule 23.8 A 1 to Benefited Properties as a whole shall not exceed 60 Acre-Feet of metered water demand per Water Year. The Pacific Grove Water Entitlement allocated pursuant to Rule 23.8 A 2 to Benefited Properties as a whole shall not exceed 35 Acre-Feet of metered water demand per Water Year.
 - b. The water usage under the Pacific Grove Water Entitlement on any Benefited Property shall not exceed the amount of the Water Entitlement allocated to such Benefited Property, measured in accordance with the Water Use Factors specified at the time of connection in the MPWMD Rules, as amended from time to time; and
 - c. For purposes of collecting Connection Charges and fees, the projected water usage of the Benefited Properties shall be calculated in the manner set forth in Rule 24, as it may be amended from time to time.
4. Further, notwithstanding any other provision of this Rule, once a new water Connection or Intensified Water Use is established pursuant to a Water Use Permit for use of all or a portion of a Pacific Grove Water Entitlement:

- a. Use of water through such Connection shall not be entitled to preferential access to water over any other Water User of the Cal-Am Water Distribution System; and
 - b. The fixtures on the Benefited Property served by that Connection shall be subject to verification of Water Use Capacity in the manner specified in the MPWMD Rules, as amended from time to time; and
 - c. The use of water on the Benefited Property served by that Connection shall be accounted for by MPWMD in the manner specified at the time of Connection in the MPWMD Rules, as amended from time to time; and
 - d. The restrictions of use set forth above shall be enforced as determined by MPWMD to be necessary.
5. The suspension of any Water Use Permit shall not diminish or otherwise adversely affect present actual use of water by reason of prior Expansion or Extension of the Cal-Am Water Distribution System through any Connection previously made pursuant to such Water Use Permit, except that actual use of water may be reduced pursuant to the provisions of subparagraphs C-1 through C-4.
 6. Water Use Permits issued pursuant to this Rule shall represent a vested property interest upon issuance and shall not be subject to Revocation or cancellation except as expressly set forth in subparagraph D below.
 7. The portion of the Pacific Grove Water Entitlement granted by each Water Use Permit shall not be subject to reallocation pursuant to MPWMD Rule 30, nor shall it be terminated or diminished by reason of any water emergency, water moratorium or other curtailment on the setting of meters for the Cal-Am Water Distribution System, nor shall it otherwise be subject to diminishment or Revocation.

D. WATER USE PERMIT PROVISIONS

1. Each Water Use Permit issued by the General Manager shall identify with respect to each Benefited Property:

- a. the nature (Non-Residential/Residential) of the water use to be applied to each Benefited Property;
 - b. the number and nature of Connections projected for each Benefited Property; and
 - c. the amount of the Water Entitlement dedicated to, conveyed with, or separately conveyed to, the Benefited Property.
2. Each Water Use Permit issued by the General Manager shall contain a term providing that the Water Use Permit may be used only on the Benefited Property specified in the Water Use Permit. The Water Use Permit shall also contain a condition specifying that the Water Use Permit shall be conveyed and assigned to successors-in-interest to the Benefited Property upon conveyance of the Benefited Property and may not be conveyed or assigned to any other Person.

E. REVOCAION, TERMINATION, OR MODIFICATION OF WATER USE PERMITS

1. Each Water Use Permit which on or after January 1, 2095, embodies an annual Water Entitlement in excess of requirements for planned land uses on a Benefited Property or which purports to authorize usage in excess of the constitutional limitation to reasonable and beneficial use shall be subject to modification, Revocation, or termination in the sole discretion of MPWMD, such that the water usage authorized thereby shall not exceed such requirements and limitations.
2. Prior to any modification, termination or Revocation pursuant to this subparagraph E, the holder of the Water Use Permit shall be entitled to notice and a hearing, and any termination, Revocation, or modification shall be subject to appeal to the Board pursuant to Rule 70 of the MPWMD Rules and Regulations.

F. CAL-AM SYSTEM EXPANSION/EXTENSION PURSUANT TO WATER USE PERMITS

1. Each Water Use Permit shall entitle the Owner of the Benefited Property to Potable water service to be provided by the Cal-Am Water Distribution System for such Benefited Property

2. Upon the filing of the information and payment of the fees required pursuant to Rule 23, the General Manager shall issue a Water Permit authorizing the Expansion/Extension of the Cal-Am Water Distribution System consistent with this Rule 23.8. Customary fees and Connection Charges shall be calculated based upon the Water Use Capacity for proposed or planned development upon Benefited Properties and calculated in the manner described in Rule 24. The water use represented by such Expansion/Extensions of the Cal-Am Water Distribution System shall not exceed the Water Entitlement evidenced by such Water Use Permit. In the event that an Owner of any Benefited Property requests an Expansion/Extension of the Cal-Am Water Distribution System with respect to less than all of the Water Entitlement evidenced by such Water Use Permit, the General Manager shall make a record of the respective amounts deducted from and remaining under the pertinent Water Entitlement (as evidenced in the Water Use Permit).
3. The Owner of any Benefited Property to which the Owner has previously applied a portion of a Water Entitlement through prior Expansions/Extensions of the Cal-Am Water Distribution System shall be entitled to increase the annual water use on such Benefited Property upon presentation of the information and payment of the fees set forth in this subsection E, provided that such increase does not cause the water use on the Benefited Property to exceed the Water Entitlement owned by such Owner.
4. The actions required to be taken by the General Manager pursuant to the foregoing provisions of this subsection E shall be ministerial, non-discretionary acts which shall not be affected by any water moratorium, water emergency, Allocation decision, or other curtailment on the setting of new water meters for the Cal-Am Water Distribution System and shall be enforceable by court order.
5. Nothing in the foregoing is intended to or shall affect the ability of MPWMD to curtail or eliminate the actual use of water through any Connection previously made pursuant to a Water Use Permit to the extent that such curtailment or elimination is authorized by other laws, ordinances, or regulations as are generally applicable to all similarly situated users (Residential or Non-Residential Users within the Cal-Am Water Distribution System with lots classified by MPWMD as the same size) actually using water from the Cal-Am Water Distribution System, nor is it intended to provide or imply that any Water Use Permit holder shall not be subject to such generally applicable laws, ordinances, and

regulations. For example, Persons using water from the Cal-Am Water Distribution System are required to reduce their water usage in the various stages in MPWMD’s Expanded Water Conservation and Standby Rationing Plan, and may be penalized or their water service may be terminated for failing to reduce water usage as required. Similarly, such Persons must pay the rates and charges imposed for such water service, or their water service may be terminated. However, except as may be occasioned by a physical shortage of water, because the Pacific Grove Water Entitlement, MPWMD shall not make such curtailment or elimination of any actual use of water through any Connection made under a Water Use Permit issued pursuant to this Rule 23.8 for any reason that is based solely on insufficiencies of, or limitations in, Cal-Am water rights.

Section Eight: 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 Nine: Effect Date and Sunset

This ordinance shall take effect at 12:01 a.m. on the 30th day following adoption. This ordinance shall not have a sunset date.

On motion of Director _____ and second by Director _____, the foregoing ordinance is adopted upon this ____ day of _____, 2015, by the following vote:

AYES:

NAYS:

ABSENT:

I, _____, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing ordinance was duly adopted on the ____ day of _____.

Witness my hand and seal of the Board of Directors this ____ day of _____.

Secretary to the Board



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

APR 09 2012

In Reply Refer to:
MJQuint:262.0(27-01)

California American Water - Monterey
c/o Tim Miller
1033 B Avenue, Suite 200
Coronado, CA 92118

Dear Mr. Miller:

ORDER WR 2009-0060; CALIFORNIA PUBLIC UTILITIES COMMISSION DECISION 11-03-048

Thank you for your November 29, 2011 letter regarding the California Public Utilities Commission (Commission) Decision 11-03-048 (D. 11-03-048) and a need for clarification from the State Water Resources Control Board (State Water Board) related to Condition 2 of Order WR 2009-0060. You identify that Commission D. 11-03-048 imposes three separate obligations on Cal-Am with respect to implementing a moratorium and consultation with the State Water Board. Your letter recites the requirements from the Commission's decision, then sets forth Cal-Am's proposal, followed by a description of a meeting with the Monterey Peninsula Water Management District (MPWMD). This response includes your recital of the Commission decision, Cal-Am's proposal and the State Water Board's responses to each proposal in the order presented in your letter.

Condition 2 of Order WR 2009-0060 states "Cal-Am shall not divert water from the Carmel River for new service connections or for any increase use of water 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."

Ordering Paragraph 2 of D.11-03-048 states:

California-American Water Company shall confer with Monterey Peninsula Water Management District on the subject of how best to serve demonstrated and compelling institutional public health and safety water needs within the Monterey District in the light of Condition 2 [of Order WR 2009-0060].

Cal-Am's Proposal: Cal-Am proposes that upon the MPWMD finding that an institutional project presents a demonstrated and compelling public health and safety need that warrants an exception to Condition No. 2, Cal-Am will cooperate with the interested institution and MPWMD staff to meet with State Water Board staff and request that the State Water Board issue an exception from Condition 2. You state that the MPWMD agreed that Cal-Am's approach would best address any identified institutional health and safety needs.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 J Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

State Water Board's Response: The State Water Board generally agrees with the proposed procedure of requesting an exception from Condition 2 for public health and safety needs, provided: (1) the procedure allows adequate time for State Water Board staff to review the proposed exception; and (2) expanded water service is not provided prior to the State Water Board granting such an exception. Prior to approving any exception to Condition 2, Cal-Am must be able to demonstrate that the Carmel River is the only available and viable water supply to meet the public health and safety need.

Ordering Paragraph 3 of D.11-03-048 states:

Cal-Am shall confer with MPWMD and then consult with the State Water Board to develop or select a workable protocol for determining the past use baseline as well as measuring increase in water use.

Cal-Am's Proposal: Cal-Am proposes that an increase in water use will be determined by comparing the estimated consumption of the proposed use, determined by the MPWMD using MPWMD's fixture count or commercial factor method, to the lower of the fixture count for the existing use, or the five year historical average of actual water use for the service address. MPWMD suggests using a factor to factor comparison only (and not comparing to actual historical use) because comparing to prospective use based on fixture unit counts to actual usage may induce prospective property sellers to artificially increase water use to facilitate changes in use by prospective buyers.

State Water Board Response: The State Water Board agrees to meet and discuss this matter. The potential for property owners to artificially increase water use to obtain a higher historical water use baseline is of concern. Until a determination to the contrary is made, the State Water Board will determine the baseline for past water use based on the lesser of the actual average metered annual water use for a water year from the last five years' of records, or the amount calculated from the fixture unit count.

Ordering Paragraph 4 of D.11-03-048 states:

Cal-Am shall ask the State Water Board for written guidance with respect to any unresolved issues of interpretation or implementation concerning Condition 2 of Order WR 2009-0060, including any pertaining to requests by holders of water credits and entitlements from the MPWMD.

Cal-Am's Proposal: Cal-Am and MPWMD identified the following issues:

Changes in "Use"

Condition No. 2 of Order WR 2009-0060 prohibits Cal-Am from serving an increased use of water at an existing service address due to a change in zoning or use. [Footnote 2 states "There has been little debate that a "change in zoning" is a Legislative act by the local land use authority that changes the use allowed as of right to a piece of real property. If the State Water Board had a different intent when adopting Order WR 2009-0060, we request clarification of the State Water Board's intent."] Because the word "use" is included in the same phrase as "zoning," Cal-Am interprets that phrase to reference local land use regulations. Therefore, whether there is a change in "use" depends on how the local land use regulations classify businesses; however such classifications may vary by jurisdiction, frequently contain illustrative and not exhaustive lists, and may vary from MPWMD regulations regarding a change in use. We request that the State Water Board clarify how a "change in use" is to be determined for the purposes of complying with Order WR 2009-0060.

State Water Board Response: 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. On October 20, 2009, the date of Order WR 2009-0060, each existing service connection had a specific zoning and use designation by both MPWMD and local land use authorities, and some prospective users may have obtained all necessary written approvals required for project construction and connection to Cal-Am's water system. The State Water Board concludes that Condition 2 prohibits any increased water use at an existing service address that results from a change in zoning or use approved by either MPWMD or a local land use authority after October 20, 2009.

Use of Water Credits

Under the MPWMD's rules and regulations, if a Cal-Am customer invests in certain water conserving improvements, that customer can obtain a "credit" for a portion of the water that is estimated to be conserved by the improvement. That credit can then be used in the future if the customer proposes to modify their property in a way that may increase water consumption. The water credit concept is discussed in State Water Board Order WR 2010-001 and the petitions for reconsideration that gave rise to that Order. It is Cal-Am's contention that Order WR 2010-001 clearly expressed the State Water Board's interpretation of Order WR 2009-0060, to wit that water credits may not be used to serve a new connection or an increased use of water at an existing service address due to a change in zoning or use. Because debate remains regarding this issue, Cal-Am and the MPWMD request the State Water Board to squarely address whether MPWMD water credits may be used to authorize a new connection or an increased use of water at an existing service address.

State Water Board Response: The State Water Board agrees with Cal-Am's contention that water credits may not be used to serve a new connection or an increased use of water at an existing service address due to a change in zoning or use as described above.

Changes in Water Service Associated with Remodeling Existing Structures

One of the most significant areas of debate is the extent to which the State Water Board's moratorium affects changes in water use attributable to remodeling existing structures. This issue arises in many forms, but the most common issues are:

- the addition of a second bathroom to an existing single family residential structure;
- the addition of a fire service connection due to a remodel, where such connection is required by the Fire Code; and
- the addition of units to an existing structure by subdividing existing units into multiple, smaller units, where a new meter is required for the additional unit(s) under MPWMD rules, but through water conservation devices, no increase in water use is expected.

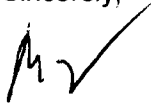
As to the first two instances, Cal-Am contends that whether such a change implicates the moratorium depends on whether the remodel constitutes a "change in zoning or use at an existing service address." If the addition constitutes a "change in zoning or use" under the local land use agency's laws, then the addition is not allowed. If the addition is not a "change in zoning or use" under the local land use agency's laws, then the addition is allowed. We request the State Water Board to confirm that this approach is consistent with the State Water Board's intent. As to the last situation, Cal-Am is unable to ascertain if this constitutes a "new connection" or if the question is whether there is an "increased use of water at an existing service address." This issue is particularly complex within the City of Carmel-By-The-Sea, where there are no street addresses. We request clarification from the State Water Board as to on how to analyze such a situation.

State Water Board Response: The State Water Board agrees with Cal-Am's position that if the addition constitutes a "change in zoning or use" under local land use agency ordinances or MPWMD rules, the addition is not allowed. For locations without a definable service address, the parcel number served at the time of the Order adoption is applicable. If new water meters are added to an existing structure that is subdivided into smaller units, with no additional units and with no change in zoning or use, the installation of additional meters is permissible. (See footnote 47 to Order 2009-0060 where the Board discusses the benefits of additional metering to multi-unit structures.) It is not permitted however, to rely on conservation credits to offset additional water use associated with new units. Such practice would amount to use of conservation credits to serve a new connection and is prohibited.

State Water Board staff is available to meet and discuss the responses provided in this letter. If you have any questions concerning this matter, please contact Mr. John O'Hagan of my staff at (916) 341-5368 or by email at johagan@waterboards.ca.gov. Written correspondence should be addressed as follows:

State Water Resources Control Board
Division of Water Rights
Attn: John O'Hagan
P.O. Box 2000
Sacramento, CA 95812-2000

Sincerely,



Barbara Evoy, Deputy Director
Division of Water Rights