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August 16, 2011

Via Email

Paul Getzelman, Chair, and Members of the Planning Commission
County of Monterey
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

Subject: SWRCB Position on Proposed Villas de Carmelo Subdivision Project

Dear Chair Getzelman and Members of the Planning Commission:

This Office represents the Save Our Carmel Neighborhoods Coalition. The State Water Resources Control Board has provided us with its position with regard to Cal Am water for the proposed subdivision project called Villas de Carmelo.

The State's Position: Service of Water by Cal Am to the Villas de Carmelo Subdivision under the State's 2009 Cease and Desist Order Against Cal Am

The State Water Resources Control Board reviewed the proposed Villas de Carmelo project. The State's August 10, 2011 letter states in key part as follows:

[T]his site is upzoning to a high density residential. There will undoubtedly be an increase in water use at the site since 2005 when the hospital closed. Although the Monterey County Planning Department concluded that the baseline water use for the property could be based on historic use in 1988, the effective date of its Ordinance 3310, the State Water Board's Cease and Desist Order was issued in 2009 and is not restricted by the 1988 Ordinance. Therefore, if Cal-Am were to serve the new 46-unit residential condominiums with water from the Carmel River, Cal-Am would likely violate Condition 2 of the [Cease and Desist] order.

(Exhibit A, p. 2, underlining added for emphasis.) This is significant new information that was not evaluated in the environmental impact report. Because the project would likely violate the State's Cease and Desist Order, the project would have significant unevaluated and unmitigated impacts with regard to water.

Cal Am's water supply includes Carmel River water. The State's position is that Cal Am cannot legally provide Carmel River water to the project. Without a legal water supply, the project cannot be approved.

Paul Getzelman, Chair, and Members of the Planning Commission
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The State's position is consistent with the position stated in the Monterey Peninsula Water Management District letter of June 29, 2011, as well as comments made by Planning Commissioners, the Coastal Commission staff, and the public.

The County Should Deny the Project Due to the Lack of a Legal Water Supply

The Planning Commission is scheduled to hold its fourth public hearing on the proposed subdivision project on August 31.

The County and the public should not spend more time and effort on a project that has no water.

The Commission should deny the project based on the lack of a legal water supply, in addition to the other significant reasons identified by the public and by public agencies.

Very truly yours,

LAW OFFICES OF MICHAEL W. STAMP


Molly Erickson

Exhibits:

- A. August 10, 2011 letter from State Water Resources Control Board (2 pages)
- B. State Water Resources Control Board Cease and Desist Order WR 2009-0060 excerpts (pp. 1, 57 [Condition 2])



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

AUG 10 2011

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

Ms. Molly Erickson
Law Offices of Michael W. Stamp
479 Pacific Street, Suite 1
Monterey, CA 93940

Dear Ms. Erickson:

VILLAS DE CARMELO: A PROPOSED 46-CONDOMINIUM PROJECT WITHIN THE CAL-AM SERVICE AREA SUBJECT TO ORDER WR 2009-0060 IN MONTEREY COUNTY.

This letter is in response to your July 8, 2011 letter regarding State Water Resources Control Board (State Water Board) Cease and Desist Order (Order) WR 2009-0060. More particularly, the Save Our Carmel Neighborhoods Coalition requests an opinion from the State Water Board as to whether or not a proposed development project, namely the Villas de Carmelo, may be served by California American Water (Cal-Am).

The Villas de Carmelo project located in Carmel, California proposes to redevelop the former Carmel Convalescent Hospital site and construct a 46-unit condominium, which will involve rezoning the site from medium density residential to high density residential. The question is whether or not Cal-Am may serve water to an existing connection and be in compliance with Condition 2 of the order. Condition 2 of the order 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."

In addition, you will find a footnote attached to Condition 2 that reads:

"Multiunit residential, commercial or industrial sites may currently be served by a single water meter. The installation of additional meters at an existing service will not be viewed as a new service connection provided that the additional metering does not result in an increase in water use. Metering each unit of a multiunit building tends to increase accountability in the use of water and the effectiveness of water conservation requirements."

10/10/11

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

EXHIBIT A.p. 102

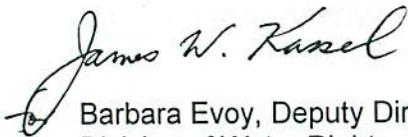
Ms. Molly Erickson

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AUG 10 2011

According to your letter and the Monterey County Planning Commission records, each of the 46-unit condominiums will have its own individual water meter under the Monterey Peninsula Water Management District rule 23.B(a). Even though this promotes a greater accountability in the use of water and effectiveness of water conservation, this site is upzoning to a high density residential. There will undoubtedly be an increase in water use at the site since 2005 when the hospital closed. Although the Monterey County Planning Department concluded that the baseline water use for the property could be based on historic use in 1988, the effective date of its Ordinance 3310, the State Water Board's Cease and Desist Order was issued in 2009 and is not restricted by the 1988 Ordinance. Therefore, if Cal-Am were to serve the new 46-unit residential condominiums with water from the Carmel River, Cal-Am would likely violate Condition 2 of the order.

Sincerely,



Barbara Evoy, Deputy Director
Division of Water Rights

cc: California American Water – Monterey
c/o Craig E. Anthony
511 Forest Lodge Road, Suite 100
Pacific Grove, CA 93950

EXHIBIT A, p. 2 of 2

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2009-0060

In the Matter of the Unauthorized Diversion and Use of Water
by the California American Water Company

Parties

**Water Rights Prosecution Team¹
California American Water Company**

Interested Parties

**Monterey Peninsula Water Management District, City of Carmel by the Sea,
City of Seaside, Seaside Basin Watermaster, Pebble Beach Company,
Monterey County Hospitality Association, City of Monterey, City of Sand City,
Division of Ratepayers Advocates of the California Public Utilities Commission,
Public Trust Alliance, Carmel River Steelhead Association,
Ventana Chapter of the Sierra Club, California Sportfishing Protection Alliance,
Planning and Conservation League, California Salmon and Steelhead Association,
National Marine Fisheries Service**

SOURCE: Carmel River

COUNTY: Monterey

CEASE AND DESIST ORDER

BY THE BOARD:

INTRODUCTION

The California American Water Company (Cal-Am or CAW) diverts water from the Carmel River in Monterey County. The water is used to supply the residential, municipal, and commercial needs of the Monterey Peninsula area (peninsula) communities. In 1995 the State Water

¹ The Water Rights Prosecution Team includes: (1) James Kassel, Assistant Deputy Director for Water Rights, (2) John O'Hagan, Manager, Water Rights Enforcement Section (3) Mark Stretars, Senior Water Resource Control Engineer, (4) John Collins, Environmental Scientist and (5) Staff Counsels Reed Sato, Yvonne West and Mayumi Okamoto. In addition, for purposes of complying with *ex parte* prohibitions, Kathy Mrowka, Senior Water Resource Control Engineer, is also treated as a member of the Prosecution Team.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT Cal-Am shall cease and desist from the unauthorized diversion of water from the Carmel River in accordance with the following schedule and conditions.⁴⁶

1. Cal-Am shall diligently implement actions to terminate its unlawful diversions from the Carmel River and shall terminate all unlawful diversions from the river no later than December 31, 2016.
2. 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.⁴⁷
3. At a minimum, Cal-Am shall adjust its diversions from the Carmel River in accordance with the following:
 - a. Commencing on October 1, 2009,⁴⁸ Cal-Am shall not divert more water from the river than the base of 10,978 afa,⁴⁹ as adjusted by the following:
 - (1) Immediate Reduction: Commencing on October 1, 2009, Cal-Am shall reduce diversions from the river by 5 percent, or 549 afa.

⁴⁶ Attachment 1 to this order, "Table 1, Projected Reductions in Illegal Diversions from the Carmel River," shows the reductions in illegal diversions from the Carmel River that should result from conditions 1, 2 and 3 of this order.

⁴⁷ Multiunit residential, commercial or industrial sites may currently be served by a single water meter. The installation of additional meters at an existing service will not be viewed as a new service connection provided that the additional metering does not result in an increase in water use. Metering each unit of a multiunit building tends to increase accountability in the use of water and the effectiveness of water conservation requirements.

⁴⁸ Each water year runs from October 1 to September 30 of the following year.

⁴⁹ Cal-Am diverts 3,376 afa under legal rights and, on average, 7,602 afa without a basis of right. (3,376 + 7,602 = 10,978 afa).